

BellSouth Telecommunications, Inc.  
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Nashville, TN 37201-3300

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July 27, 2001

Guy M. Hicks  
General Counsel

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EXECUTIVE SECRETARY

**VIA HAND DELIVERY**

Mr. David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

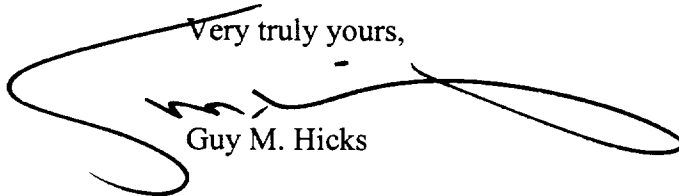
Re: *Approval of the Interconnection Agreement and Amendment Thereto Negotiated by BellSouth Telecommunications, Inc. and Tritel Communications, Inc. Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996*  
Docket No. 99-00203 01-00663

Dear Mr. Waddell:

Enclosed for filing are the original and thirteen copies of the Petition for Approval of the Interconnection Agreement and Amendment Thereto Negotiated by BellSouth Telecommunications, Inc. ("BellSouth") and Tritel Communications, Inc. ("Tritel") Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996. The enclosed Agreement and Amendment were negotiated by Tritel and BellSouth and is consistent with the standards for approval. The Amendment to the Interconnection Agreement incorporates the Volume and Term Agreement between the parties.

Tritel and BellSouth respectfully request that the Petition, the Agreement and the Amendment be filed, reviewed and considered for approval as expeditiously as possible.

Very truly yours,



Guy M. Hicks

GMH/dt

Enclosure

cc: Joseph Pardue, Tritel Communications, Inc.  
Chip Gerry, Esq.  
Leah Cooper, BellSouth Telecommunications, Inc.

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *Approval of the Interconnection Agreement and Amendment Thereto  
Negotiated by BellSouth Telecommunications, Inc. and Tritel  
Communications, Inc. Pursuant to Sections 251 and 252 of the  
Telecommunications Act of 1996*

Docket No. ~~99-00203~~ 01 - 00663

**PETITION FOR APPROVAL OF THE INTERCONNECTION  
AGREEMENT AND AMENDMENT THERETO NEGOTIATED BY  
BELLSOUTH TELECOMMUNICATIONS, INC. AND  
TRITEL COMMUNICATIONS, INC. PURSUANT TO SECTIONS  
251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996**

COME NOW BellSouth Telecommunications, Inc. ("BellSouth") and Tritel Communications, Inc. ("Tritel") and respectfully file this request with the Tennessee Regulatory Authority (the "TRA") for approval of the attached Interconnection Agreement and Amendment thereto (collectively referred to as the "Agreement"). The Agreement was negotiated between Tritel and BellSouth pursuant to Sections 251 and 252 of the Telecommunications Act of 1996, ("the Act"). The Agreement provides for the continued interconnection of the two companies' networks, thereby facilitating Tritel's provision of commercial mobile radio services ("CMRS") to both residential and business customers in Tennessee. The Amendment to the Agreement incorporates the Volume and Term Agreement between the parties. Tritel and BellSouth, therefore, respectfully request that the Authority act within the 90 days specified by the Act and approve the Agreement and the Amendment.

In support of their request, Tritel and BellSouth state the following:

### **THE PARTIES**

1. BellSouth is an incumbent local exchange carrier authorized to provide local exchange service in Tennessee.

2. Tritel is a telecommunications carrier that has been granted authority by the Federal Communications Commission to provide CMRS in a specific market in Tennessee.

### **THE AGREEMENT**

3. Tritel and BellSouth have successfully negotiated the agreement for the continued interconnection of their networks. The Amendment to the Agreement incorporates the Volume and Term Agreement between the parties. A copy of the Agreement and the Amendment is attached hereto and incorporated herein by reference.

4. BellSouth and Tritel have entered into this Agreement, pursuant to Sections 251 (c) and 252 (a) of the Act.

5. Pursuant to Section 252 (e) of the Act, Tritel and BellSouth are submitting their Agreement to the TRA for its consideration and approval.

### **COMPLIANCE WITH THE ACT**

6. First, as required by Section 252(e)(2)(a)(i) of the Act, the Agreement does not discriminate against any other telecommunications carrier. Other carriers are not bound by the Agreement and remain free to negotiate independently with BellSouth pursuant to Section 252 of the Act.

7. Second, the Agreement is consistent with the public interest, convenience, and necessity, as required by Section 252(e)(2)(a)(ii) of the Act.

#### **APPROVAL OF THE AGREEMENT**

8. In accordance with Section 252(e) of the Act, the TRA is charged with approving or rejecting the Agreement between Tritel and BellSouth within 90 days of its submission. The Act provides that the TRA may reject such Agreement only if it finds that the Agreement or any portion thereof discriminates against a telecommunications carrier not a party to the Agreement, or if it finds that the implementation of the Agreement or any portion thereof is not consistent with the public interest, convenience and necessity.

9. Tritel and BellSouth aver that the Agreement is consistent with the standards for approval.

10. Pursuant to Section 252 (i) of the Act, once the Agreement is approved, BellSouth will make the terms and conditions of the Agreement available to any similarly situated CMRS provider.

11. Tritel and BellSouth respectfully request that the TRA approve the Agreement and Amendment negotiated between the parties without revision as expeditiously as possible consistent with the public interest.

This \_\_\_\_ day of \_\_\_\_\_, 2001.

Respectfully submitted,

BellSouth Telecommunications, Inc.

BY: 

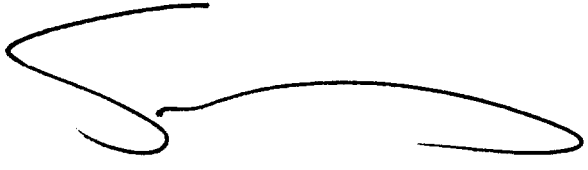
Guy M. Hicks  
Suite 2101  
333 Commerce Street  
Nashville, TN 37201-3300  
615/214-6301

### CERTIFICATE OF SERVICE

I, Guy M. Hicks, hereby certify that I have served a copy of the foregoing Petition for Approval of the Amendment to the Interconnection Agreement on the following via United States Mail on the 3<sup>rd</sup> day of July, 2001.

Mr. Joseph Pardue  
Director of Carrier Relations  
Tritel Communications, Inc.  
111 E. Capital Street  
Suite 500  
Jackson, MS 39201

Mr. Chip Gerry  
Gerry, Friend & Saprnov, LLP  
Three Ravinia Drive, Suite 1450  
Atlanta, Georgia 30346-2131

  
\_\_\_\_\_  
Guy M. Hicks

**First Amendment to  
Interconnection Agreement between  
Tritel Communications, Inc. and  
BellSouth Telecommunications, Inc.**

This Agreement (the "Amendment") is made and entered into as of April 30, 2001, between Tritel Communications, Inc., a Delaware corporation ("Tritel") and BellSouth Telecommunications, Inc. ("BellSouth"), a Georgia corporation.

WHEREAS, Tritel and BellSouth (hereinafter referred to collectively as the "Parties") have entered into that certain Interconnection Agreement, effective March 16, 2001, for the State of Tennessee, which has or will be filed with the Commission in said state (as filed, the "Tennessee Interconnection Agreement"); and

WHEREAS, the Parties have also entered into Interconnection Agreements, effective March 16, 2001, for the States of Alabama, Florida, Georgia, Kentucky, Louisiana and Mississippi (the "Interconnection Agreement") which have or will be filed with the Commissions in each of said states; and

WHEREAS the Parties desire to amend the Tennessee Interconnection Agreement; and

WHEREAS, the Parties have also entered into a contract service arrangement whereby Tritel may purchase certain BellSouth services pursuant to a Volume and Term Agreement having an Effective Date of August 1, 1999 ("Volume and Term Agreement"); and

WHEREAS, the Parties desire to amend the Tennessee Interconnection Agreement to incorporate the Volume and Term Agreement as an attachment to the Tennessee Interconnection Agreement.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tritel and BellSouth hereby covenant and agree that the General Terms and Conditions of the Tennessee Interconnection Agreement be amended as follows:

1. Section V. (D) (ii) of the Interconnection Agreement is deleted in its entirety and replaced with the following:

V. (D) (ii) Carrier will provide or bear the cost of all trunk groups for the delivery of Local Traffic from Carrier to each BellSouth access tandem and end office at which the parties' networks are

interconnected, and, Carrier will provide or bear the cost of all trunk groups for delivery and receipt of Intermediary traffic; Carrier may supply its own interconnection facilities or may purchase such facilities (a) from BellSouth pursuant to a separate agreement, including but not limited to, the Volume and Term Agreement attached hereto as Exhibit 1 and incorporated herein by this reference or pursuant to tariff for this purpose, or (b) from any other third-party supplier; and

2. The Parties acknowledge and agree that the term of the Volume and Term Agreement exceeds the term of the Tennessee Interconnection Agreement. As such, the Parties hereby agree that the Volume and Term Agreement shall be incorporated into any interconnection agreement subsequently entered into by the Parties for the State of Tennessee for the remainder of the term set forth in the Volume and Term Agreement. If no such subsequent interconnection agreement is negotiated, this Amendment shall survive until the expiration of the term of the Volume and Term Agreement.

3. Except as expressly provided herein, all other provisions of the Tennessee Interconnection Agreement, the Interconnection Agreement and the Volume and Term Agreement shall remain unchanged and in full force and effect.

4. Nothing in this Amendment shall in any way amend, modify, alter, limit, change, restrict or otherwise effect the rights, benefits, duties, obligations or liabilities of the Parties under the Volume and Term Agreement or the rates, terms and conditions contained therein.

5. For purposes of this Amendment, capitalized terms have the meanings set forth herein unless the context requires otherwise. Terms that appear herein (whether or not capitalized) that are not defined herein have the meanings ascribed to them in the Interconnection Agreement or the Volume and Term Agreement, as the case may be, and if not defined therein have the meanings ascribed to them in the Act, or (if not defined therein) have the meanings customarily associated with them based on ordinary usage in the telecommunications industry as of the Effective Date.

6. BellSouth and Tritel covenant that this Amendment shall be promptly submitted to the Tennessee Regulatory Authority for approval pursuant to section 252(e) of the Act, and agree that either or both of the parties is authorized to submit this Amendment to the Tennessee Regulatory Authority.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

**BellSouth Telecommunications, Inc.**

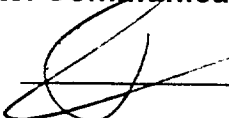
By: 

Name: Randy J. Ham

Title: Director - Wireless

Date: June 25, 2001

**Tritel Communications, Inc.**

By: 

Name: Thomas H. Sullivan  
**President**

Title: \_\_\_\_\_

Date: JUN 07 2001



# VOLUME AND TERM AGREEMENT

*by and between*

BELLSOUTH TELECOMMUNICATIONS, INC.

and

TRITEL COMMUNICATIONS, INC.

ORIGINAL COPY

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## VOLUME AND TERM AGREEMENT

**THIS VOLUME AND TERM AGREEMENT** ("Agreement") is entered as of the 1<sup>st</sup> day of August, 1999 ("Effective Date") into by and between BellSouth Telecommunications, Inc., a Georgia corporation ("BellSouth") and Tritel Communications, Inc., a Delaware corporation, on behalf of itself and its affiliated companies signatory hereto (hereinafter collectively referred to as "Tritel" or "Customer").

**WHEREAS**, Customer desires to purchase certain services from BellSouth for use in connection with its provision of Commercial Mobile Radio Service communications services; and

**WHEREAS**, BellSouth desires to provide telecommunication services to meet Customer's requirements; and

**WHEREAS**, this Agreement sets forth certain rates, terms and conditions for the services to be provided to Customer by BellSouth; and

**WHEREAS**, the Parties desire to reduce to writing their understanding relating to this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the Parties do hereby agree as follows:

### **1. DEFINITIONS**

Capitalized terms used herein have the meanings set forth hereunder. Any capitalized terms used but not otherwise defined herein have the meaning set forth in the applicable state Tariff (as that term is defined hereunder). Section references, unless otherwise indicated, refer to sections of this Agreement.

**1.1 Acceptance.** "Acceptance" (or "to Accept") of Services has the meaning set forth in Section 3.11 and Schedule 3.11 hereof.

**1.2 Activation.** "Activation" means that Services at a Site have been Accepted, and the Site is operational and available for use by Customer to provide CMRS services to its customers.

**1.3 Adds.** "Adds" means additions to Services.

**1.4 Affiliate.** "Affiliate" means any Person directly or indirectly controlling, controlled by or under common control with another. For purposes of this Agreement, such control means the power to vote ten (10%) percent or more of the equity securities or comparable interest of the controlled Person.

1.5 **Anniversary Date.** "Anniversary Date" means each annual anniversary of the Effective Date.

1.6 **Annual Revenue Commitment.** "Annual Revenue Commitment" ("ARC") is an amount equal to that set forth on Appendix I of this Agreement, adjusted from time to time in accordance with the provisions of this Agreement.

1.7 **ARC Charges.** "ARC Charges" has the meaning set forth in Section 6.11.1 hereof.

1.8 **Annual True-Up.** "Annual True-Up" has the meaning set forth in Section 6.11.1 hereof.

1.9 **Audit.** "Audit" has the meaning set forth in Section 3.6.1 hereof.

1.10 **Bonus Discount.** "Bonus Discount" has the meaning set forth in Section 6.2.2 hereof.

1.11 **Business Day(s).** "Business Day(s)" means any calendar day in which the Customer's offices are open for business.

1.12 **Changes.** "Changes" means a change of transmission rate or functionality for a Service which does not require a visit to a Customer Site by BellSouth personnel.

1.13 **Charges.** "Charges" means charge(s), based on the Rates, incurred by Customer for Services and Other Services.

1.14 **Chronic Interruptions.** "Chronic Interruptions" has the meaning set forth in Section 12.3 hereof.

1.15 **Commercial Mobile Radio Service ("CMRS").** "CMRS" has the meaning set forth in 47 C.F.R. Section 20.3.

1.16 **Comparable Service(s).** "Comparable Service(s)" means any service of a "higher level" that is functionally equivalent to the Services or Other Services and which are offered by BellSouth at any time during the Term. For purposes of this definition "higher level" means improvements, upgrades or changes to telecommunications or information transmission technology producing higher functionality or increased capacity, where such improvements are determined according to recognized industry standards.

1.17 **Competitive Notice.** "Competitive Notice" has the meaning set forth in Section 6.5 hereof.

**1.18 Contract Service Agreement ("CSA").** "Contract Service Agreement" has the meaning set forth in the following Tariffs, as the case may be: BellSouth Telecommunications, Inc.-Georgia Private Line Services Tariff, Section B5.7; South Central Bell Telephone Company-Tennessee Private Line Services Tariff, Section B5.7; Southern Bell Telephone and Telegraph Company-South Carolina Private Line Services Tariff, Section B5.7; BellSouth Telecommunications, Inc.-Alabama Private Line Services Tariff, Section B5.7; BellSouth Telecommunications, Inc.-Florida Private Line Services Tariff, Section B5.6; BellSouth Telecommunications, Inc.-Mississippi Private Line Services Tariff, Section B5.7; Southern Bell Telephone and Telegraph Company-North Carolina Private Line Services Tariff, Section B5.1C; and South Central Bell Telephone Company-Louisiana Private Line Services Tariff, Section B5.7; and such other comparable instrument(s) filed with the Kentucky Public Utility Commission as may be required to give full force and effect to this Agreement in the State of Kentucky.

**1.19 Contract Year.** "A Contract Year" is each consecutive twelve (12) month period during the Term following the Effective Date.

**1.20 Deficiency.** "Deficiency(ies)" means failure of any Service or any Other Service(s) to strictly conform to the Specifications.

**1.21 Delete(s).** "Delete(s)" (or "to Delete") means the discontinuation of (to discontinue) one or more Services by Customer's request.

**1.22 Discounts.** "Discounts" mean the applicable percentages for each Contract Year that are set forth in Appendix I of this Agreement.

**1.23 Early Termination.** "Early Termination" means termination by Customer prior to the end of the Term, as described in Section 12.1 hereof.

**1.24 Effective Date.** "Effective Date" means either (i) prior to Customer's exercise of the V&T Option pursuant to Section 6.12.3 hereof, the date set forth in the first paragraph on page one (1) of this Agreement, and (ii) as of the date of Customer's exercise of the V&T Option, the date described in Section 6.12.4 hereof, as the case may be.

**1.25 Eligible Services.** "Eligible Services" means those Services listed in Appendix II hereof.

**1.26 End User.** "End User" means Customer, its Affiliates, all officers, employees, agents, contractors, customers or subscribers of the foregoing, and any other Person authorized by Customer to use its Commercial Mobile Radio Services.

**1.27 Event of Default.** "Event of Default" means an event set forth in Section 13.1 hereof.



- 1.28 **Expedites.** "Expedites" means accelerated Installation of Services prior to the Installation Date.
- 1.29 **Expiration Date.** The "Expiration Date" of this Agreement shall be the last day of the Term.
- 1.30 **Installation (to Install).** "Installation" (or "to Install") means the furnishing of Services or Other Services by BellSouth to Customer at a Site as specified in an accepted Purchase Order.
- 1.31 **Installation Date.** "Installation Date" means the date upon which BellSouth is required to complete Installation of Services at a given Site.
- 1.32 **Interim True-Up.** "Interim True-Up" has the meaning set forth in Section 6.12.5.1 hereof.
- 1.33 **Interim Underutilization Charge.** "Interim Underutilization Charge" has the meaning set forth in Section 6.12.5.2 hereof.
- 1.34 **Interruption.** "Interruption" has the meaning set forth in the applicable Tariff(s) listed on Schedule 6.7 hereof.
- 1.35 **Interruption Credit.** "Interruption Credit" has the meaning set forth in the applicable Tariff(s) listed on Schedule 6.7 hereof.
- 1.36 **Moves.** "Moves" means a change of (i) Site or (ii) point of demarcation between BellSouth's network and Customer's facilities.
- 1.37 **Net Charges.** "Net Charges" means Charges to which Discounts have been applied.
- 1.38 **Net Charge Payment.** "Net Charge Payment" means each payment of monthly Net Charges.
- 1.39 **Option.** "Option" has the meaning set forth in Section 6.5 hereof.
- 1.40 **Other Customer.** "Other Customer" means any other similarly situated customer of BellSouth taking Services under a separate agreement.
- 1.41 **Other Customer Rates.** "Other Customer Rates" means the rates for services provided to any Other Customer.
- 1.42 **Other Service(s).** "Other Service(s)" means any service(s) in addition to the Services rendered by BellSouth within the scope of this Agreement.

1.43 **Pro Rata ARC.** "Pro Rata ARC" has the meaning set forth in Section 6.12.5.1 hereof.

1.44 **Pro Rata ARC Charges.** "Pro Rata ARC Charges" has the meaning set forth in Section 6.12.5.1.1 hereof.

1.45 **Partial Contract Year.** "Partial Contract Year" has the meaning set forth in Section 6.12.5.1 hereof.

1.46 **Partial Discontinuance.** "Partial Discontinuance" means Customer's discontinuance of certain Services, as described in Section 12.3 hereof.

1.47 **Partial Termination.** "Partial Termination" means Customer's discontinuance of the purchase of a Service or Service Element prior to the end of a Service Period, as more fully described in Section 12.4 hereof.

1.48 **Person.** "Person" means an individual, partnership, limited liability company or partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, business unit, division or other entity of whatever nature.

1.49 **Personal Communication Service ("PCS").** "PCS" has the meaning set forth in 47 C.F.R. Section 24.5.

1.50 **Proposal.** "Proposal" has the meaning set forth in Section 6.5 hereof.

1.51 **Purchase Order.** "Purchase Order" means Customer prepared documentation used by Customer to order Services under this Agreement, as described in Section 3.3 hereof.

1.52 **Rates.** "Rates" means the recurring and nonrecurring rates for Services (exclusive of Discounts), as set forth in the Tariffs listed on Schedule 1.52 hereof, adjusted from time to time in accordance with the provisions of this Agreement.

1.53 **Regulatory Authority.** "Regulatory Authority" means the Federal Communication Commission ("FCC"), the United States Congress, any public service commission, administrative agency, judicial authority, or any other federal, state, municipal, international, or foreign governmental body or agency (including without limitation federal, state and local health, safety and environmental regulatory authorities) having authority over this Agreement, the Parties hereto, the Services, the Tariffs or any matter related thereto.

1.54 **Replaced Services.** "Replaced Services" has meaning set forth in Section 6.5.3 hereof.

1.55 **Revised Rate(s).** "Revised Rates" has the meaning set forth in Section 6.5.1 hereof.

1.56 **Services.** "Services" means any one or more of the telecommunications services listed in Appendix II to be provided to Customer by BellSouth pursuant to this Agreement.

1.57 **Service Element.** "Service Element" means a specific circuit at a specific Site.

1.58 **Service Period.** "Service Period" means the length of time for which Customer has agreed to purchase a particular Service at a Site, as specified in an accepted Purchase Order.

1.59 **Sites.** "Sites" means Customer's locations where BellSouth is authorized to provide Services.

1.60 **Specifications.** "Specifications" means the Service performance specifications set forth in Appendix IV.

1.61 **States.** "States" means the States of Georgia, Florida, Alabama, Tennessee, Kentucky, Mississippi, Louisiana, North Carolina, and South Carolina.

1.62 **Tariff(s).** "Tariff(s)" means any of BellSouth's tariff(s) filed, as the same may be revised, modified or amended from time to time, with the FCC, any state regulatory commission, or any other Regulatory Authority which are now or in the future applicable to the Services provided to Customer hereunder.

1.63 **Term.** "Term" means either (i) prior to Customer's exercise of the V&T Option, a continuous period of five (5) years and six (6) months, commencing upon the Effective Date set forth in the first paragraph on page one (1) of this Agreement, and (ii) after Customer's exercise of the V&T Option, a continuous period of five (5) years commencing with the Effective Date described in Section 6.12.4 hereof, during which this Agreement shall be in effect.

1.64 **Termination Charge.** "Termination Charge" means charges for Customer's termination of this Agreement prior to the end of the Term, as more fully described in Section 12.1 hereof.

1.65 **Termination Date.** "Termination Date" means the date of Termination.

1.66 **Termination Liability Charge.** "Termination Liability Charge" means a charge, set forth in the applicable Tariff(s) listed on Schedule 12.4 hereof, for Customer's discontinuance of the purchase of a Service or Service Element prior to the end of a Service Period, all as more fully described in Section 12.4 hereof.

1.67 **Third Party Services.** "Third Party Services" means services provided or proposed to be provided to Customer by persons not party to this Agreement, which services are functionally equivalent to and which serve to replace any and all of the Services or Service Elements, in whole or in part, at one or more of the Sites.

1.68 **Underutilization Charges.** "Underutilization Charges" means charges for Underutilization, as more fully described in Section 6.11.2.

1.69 **Updates.** "Updates" means BellSouth's future enhancements to the Services (but excluding Comparable Services), as more fully described in Section 5.2 hereof.

1.70 **V&T Discount.** "V&T Discount" has the meaning set forth in Section 6.12.6 hereof.

1.71 **V&T Option.** V&T meaning set forth in Section 6.12.1 hereof.

1.72 **V&T Option Term.** V&T Option Term has the meaning set forth in Section 6.12.2 hereof.

1.73 **V&T Notice.** V&T Notice has the meaning set forth in Section 6.12.3 hereof.

## 2. **AGREEMENT**

2.1 **Scope and Purpose.** This Agreement is a Contract Service Arrangement ("CSA"), pursuant to which BellSouth shall provide and Customer shall purchase Services within the telephone exchanges served by BellSouth in the states of Georgia, Florida, Alabama, Tennessee, Kentucky, Mississippi, Louisiana, North Carolina, and South Carolina. This Agreement neither constitutes an interconnection agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (an "Interconnection Agreement"), nor supersedes any such Interconnection Agreement entered into by the Parties or by any of their respective Affiliates.

2.2 **Relationship Between Tariff and Agreement.** Except as otherwise provided in this Agreement, this Agreement is subject to and controlled by the provisions of Company's lawfully filed and approved Tariffs, and shall include all changes to said Tariffs as may be made from time to time. Provided, however, to the extent permitted by law, the Rates, terms and conditions (including without limitation, any discounts to which Customer may be entitled pursuant to this Agreement, to any Tariff(s) or to any other agreement or instrument whatsoever) of this Agreement shall supersede any conflicting provisions of the Tariffs.

BellSouth hereby covenants to take any and all necessary action to ensure that the Rates, terms and conditions (including without limitation, any discounts to which Customer may be entitled pursuant to this Agreement, to any Tariff(s) or to any other agreement or instrument whatsoever) herein remain in full force and effect at all times throughout the Term. The Parties further agree and acknowledge that Customer has entered into this Agreement in strict reliance upon the enforceability of this Section 2.2 and upon BellSouth's representation, warranty, and covenant made in this Section 2.2 that the Rates, terms and conditions (including without limitation, any discounts to which Customer may be entitled pursuant to this Agreement, to any Tariff(s) or to any other agreement or instrument whatsoever) of this Agreement shall remain in full force and effect for the Term.

## **2.3 Regulatory Approval.**

**2.3.1** The obligations of Customer under this Agreement are expressly conditioned upon BellSouth's filing this Agreement where necessary and otherwise obtaining any and all requisite approvals from and satisfying all regulatory requirements of Regulatory Authorities, as may be necessary or expedient to BellSouth's performance hereunder. BellSouth shall exercise its best efforts to expeditiously obtain said approvals and satisfy all regulatory requirements. In the event BellSouth is unable to satisfy the conditions of the first sentence of this Section 2.3.1 within ninety (90) days after the Effective Date, then Customer may, at its sole option and discretion, elect: (i) to void this Agreement, in any State(s) where regulatory approval has not been granted, including any payment obligations hereunder; (ii) to continue to take Services under any lawful rates, terms and conditions set forth in any Tariff; or (iii) to renegotiate the rates, terms or conditions of a revised CSA agreement (including the rates, terms and conditions available to Other Customers), to be filed with the applicable Regulatory Authorities; and upon Customer's election of alternative (ii) or (iii) preceding, said new rates, terms and conditions will automatically replace the Rates, terms and conditions set forth herein. Upon Customer's election of alternative (ii) or (iii) in the preceding sentence, BellSouth covenants and agrees either (x) to incorporate or (y) to use its best commercially reasonable efforts to renegotiate, such rates, terms or conditions in a revised CSA agreement.

**2.3.2** BellSouth shall not make any other regulatory filing affecting this Agreement whatsoever except in strict accordance with the provisions of Section 2.4.1.1 hereof.

## **2.4 Consistency of Agreement.**

**2.4.1 No Voluntary Initiation.** BellSouth shall not during the Term unilaterally initiate the filing of any Tariff to supersede, or attempt in any other manner to alter, revoke or amend, in whole or in part, this Agreement or any term or condition hereof or of the Tariffs; provided however, in the event BellSouth is ordered to do so by a Regulatory Authority, it shall strictly comply with the following provisions of Section 2.4.1.1.

**2.4.1.1 Limits on Changes.** If any Regulatory Authority requires this Agreement to be amended, replaced or altered (such amendments, replacement or alterations collectively referred to herein as "changes"), BellSouth (i) shall limit such changes to the specific provisions that the Regulatory Authority has ordered be changed; and (ii) shall make only those changes necessary to satisfy the requirements of the Regulatory Authority that ordered the changes.

**2.4.1.2 Review by Customer.** BellSouth shall give Customer notice with regard to any action directly affecting this Agreement (including any proposed changes hereto) proposed by BellSouth to comply with any orders of Regulatory Authorities. Notice of such action, including a copy of any proposed changes to the Agreement or to any applicable Tariff, as the case may be, shall be given by BellSouth to Customer as soon as available and in no event less than fifteen (15) Business Days prior to filing with any Regulatory Authorities. BellSouth

shall provide Customer with a copy of all changes to this Agreement or to any applicable Tariff required by Regulatory Authorities on or before the date they are filed, as well as copies of all other regulatory filings made at any time during the Term by BellSouth in connection with or affecting this Agreement or any applicable Tariff at any time during the Term.

**2.4.2 Remedies.** Notwithstanding the foregoing provisions, nothing in this Section 2.4 is to be construed as limiting Customer's remedies under Sections 12 and 13 hereof.

**2.5 Regulatory Reports.** BellSouth shall provide written notice to Customer of any inquiry or proceeding (including all correspondence related thereto) initiated by any Regulatory Authority to investigate, examine or rule upon this Agreement no later than five (5) Business Days after receipt thereof.

### **3. SERVICES**

**3.1 Agreement to Provide Services.** BellSouth shall provide Services to Customer in accordance with the Rates (reduced by the Discounts), terms and conditions, set forth herein; Customer agrees to pay for Services in accordance with the provisions of Section 6 hereof; these obligations are to be construed as mutually dependent covenants. Services will be available for any lawful use by End Users.

**3.2 Installation of Services.** BellSouth covenants to timely complete Installation of Services at the Sites as specified in accepted Purchase Orders, no later than the applicable Installation Date as specified in any accepted Purchase Orders, or as otherwise agreed between the Parties, as the case may be. Installation at a Site is not to be deemed complete hereunder until Customer has Accepted Services at such Site under the provisions of Section 3.11 hereof.

**3.2.1 Sites.** Customer, at its sole option and discretion, may substitute, change, or add Sites at any time during the Term through submission of a Purchase Order. No such addition, substitution, change or deletion of a Site will affect the Annual Revenue Commitment or the applicable termination requirements set forth in the Tariffs.

#### **3.3 Ordering of Services.**

**3.3.1** During the Term Customer may, but is not obligated to, order Services or Other Services (including Comparable Services) from BellSouth by issuing Purchase Orders. Each Purchase Order shall include a description of Services or Other Services to be provided, the Site, the Installation Date, the Service Period and other Installation-related information reasonably required by BellSouth.

**3.3.2** BellSouth will negotiate Installation Dates on an individual case basis for MegaLink, LightGate and SMARTRing services and will provide its best available Installation Date to Customer within ten (10) business days. BellSouth may reject a Purchase Order only if such Purchase Order fails to conform to the material requirements of this Agreement, or if

BellSouth reasonably objects to the Installation Date. No additional or different provisions proposed by BellSouth shall apply to any Purchase Order unless expressly agreed to by the Parties in writing.

**3.3.3** This Agreement and all Purchase Orders accepted by BellSouth constitute a single contract for the provision of Services. All Purchase Orders shall be automatically incorporated herein by reference upon their acceptance by BellSouth. In the event of a conflict between any Purchase Order and this Agreement, the terms and conditions of this Agreement shall control and supersede any such conflicting provision.

**3.3.4** Promptly after its acceptance of each Purchase Order, BellSouth shall prepare a BellSouth service order or other acknowledgment reflecting the details of the Purchase Order and confirming the Installation Date and shall distribute same to Customer and to all other Persons or carriers responsible for installing the Services. BellSouth shall be at all times primarily responsible for the accurate processing of Customer's Purchase Orders, and will make good faith efforts to coordinate its Installation of Services with interexchange or other carriers as required.

**3.4** **Quarterly Review.** BellSouth and Customer agree to review Installation and the composition of the Services on a calendar quarterly basis, with the first review to be scheduled on or about the first Business Day of each calendar quarter following the Effective Date. BellSouth shall provide the Customer with a quarterly progress report based upon such review. The contents of the progress report shall be determined by mutual agreement between the Parties.

**3.5** **Billing and Accounting.**

**3.5.1** **Billing Period.** BellSouth shall bill Customer in arrears on a centralized basis at Customer's address specified herein (or at such other address of which Customer may advise BellSouth in writing) for all Services provided during each calendar month or other mutually agreeable billing cycle. All participating Customer accounts will be converted by BellSouth to BellSouth's Customized Large User Bill ("CLUB") format.

**3.5.2** **Billing and Accounting.** BellSouth shall provide Customer with mutually agreed upon billing and accounting information concurrent with the invoice to which the information relates. In addition, BellSouth shall provide Customer with detailed accounting records covering all Services provided and billed under this Agreement, in a mutually agreed upon format and media. The Parties may develop additional accounting records, charge-back methodologies and other systems under mutually agreeable terms, price and conditions.

**3.5.3** **Due Date and Payment.** Customer shall pay BellSouth for all undisputed Net Charges by the past due date reflected on each invoice to avoid paying late payment charges. Customer may withhold payment for all disputed Charges, and written notification of the dispute should be given to BellSouth in accordance with Section 6.10 hereof. Late payment charges and interest charges, as set forth in the applicable BellSouth General Subscriber Service Tariffs, may

be assessed by BellSouth if undisputed Net Charges are not paid by the past due date of the invoice. BellSouth warrants and covenants that all invoices for Charges will be promptly sent after processing, and that Customer may raise late receipt of an invoice as a billing dispute pursuant to Section 6.10 hereof.

### **3.6     Audits.**

**3.6.1     Audits.** The Customer may, at its expense, from time to time, audit ("Audit") BellSouth's performance under this Agreement. Such Audit may cover items such as (but shall not be limited to) billing accuracy and average time to complete repairs. BellSouth shall produce any documents reasonably requested by Customer that BellSouth deems non-confidential and appropriate for dissemination to Customer. BellSouth shall cooperate with the person(s) conducting such Audit, and shall promptly take all action necessary to cure all errors, deficiencies or defects in its performance under this Agreement as may be determined by the findings thereof; provided, however, BellSouth's efforts to so cure shall not serve to excuse its obligations under this Agreement, nor to limit Customer's remedies hereunder.

**3.6.2     ARC Adjustment.** If Charges for Customer's use of Services decrease as a result of any Audit made in accordance with Section 3.6.1, the ARC shall be automatically adjusted downward to reflect such decrease in Charges, effective as of the date of delivery of the Audit report.

**3.7     Security.** BellSouth shall ensure that all its personnel requiring access to Customer Sites strictly comply with Customer's security procedures, in effect from time to time.

**3.8     Records and Logs.** BellSouth shall maintain complete and accurate records and logs of all Services and all related maintenance provided under this Agreement. Information from the records and logs shall be summarized by BellSouth in a report prepared from time to time hereunder and furnished to Customer.

**3.9     Disaster Recovery.** BellSouth shall exercise its best efforts to make available to Customer disaster recovery measures, including but not limited to, redundant circuits, custom controlled reconfiguration, route diversity, or alternate central office interconnection, or other measures as they become available at rates no less favorable than Other Customer Rates.

**3.10     Third Party Services.** Nothing in this Agreement shall prevent Customer, at its sole option and discretion, from using any Third Party Services in conjunction with or in addition to the Services. BellSouth agrees to reasonably cooperate in connecting the Services to such Third Party Services upon Customer's request.

**3.11     Acceptance.** BellSouth shall Install only those Services that have been tested in accordance with BellSouth's standard testing procedures and which operate in strict compliance with the Specifications set forth in Appendix IV. Upon completion of any Installation, BellSouth shall provide notice thereof to Customer. Services are to be deemed Installed and BellSouth may commence billing therefor after they have been Accepted by Customer electronically, via



facsimile or verbally, subject to satisfactory testing of the Services by Customer in accordance with the Acceptance Testing procedures set forth at Schedule 3.11 attached hereto.

#### **4. STAFFING AND ESCALATION PROCEDURES**

**4.1 Trouble Escalation.** BellSouth shall support Customer's use of Services in accordance with BellSouth's published trouble and escalation procedures in effect from time to time during the Term, written copies of which will be timely provided to Customer by BellSouth.

#### **5. SERVICES REPLACEMENT AND UPDATES**

**5.1 Service Replacement.** BellSouth shall give Customer written notice of any Comparable Services within a reasonable time after they become available. Customer may, at its sole option and discretion, elect, in writing, to replace any or all of the Services with Comparable Services at rates no less favorable than the least of (i) BellSouth's Tariff rates for the Comparable Services, (ii) the lowest rate for such Comparable Services available at that time to any Other Customer, or (iii) such other rates as may be mutually agreed upon between the Parties. Upon Customer's election of this option, said Comparable Services shall automatically be deemed Services, and BellSouth shall (with written confirmation thereof by BellSouth to Customer):

**5.1.1** Promptly replace the Rates for the replaced Services with the applicable rates for Comparable Services;

**5.1.2** Adjust Customer's ARC downward as a result of any network optimization associated with such replacement; and

**5.1.3** Waive any and all non-recurring charges for such replacement to the extent waiver of such charges is (i) available in the Tariff, (ii) made available to any Other Customer, or (iii) mutually agreed upon by the Parties.

Notwithstanding any other provision hereof, Customer shall not be liable for any Termination Charges, Termination Liability Charges, Underutilization Charges or any other similar Charges made by BellSouth pursuant to this Agreement, to any Tariff(s) or to any other agreement or instrument whatsoever, by virtue of replacing any or all Services with Comparable Services.

**5.2 Service Updates.** BellSouth agrees to provide Customer, upon request, with any and all Updates for the Services as they become generally available, at standard Tariff rates. BellSouth warrants that the addition of Updates shall not cause any degradation of Services such that performance thereof fails to comply with the Specifications.

## **6. RATES AND CHARGES**

**6.1 Rates and Charges.** Except as otherwise provided in this Section 6, and except as they may be supplemented pursuant to Section 5 hereof, Charges for Services shall be in accordance with the Rates set forth in the Tariffs listed on Schedule 1.52 hereof, and reduced by Discounts as described in Section 6.2 following. Charges will be made to Customer for Services (other than Comparable Services) in accordance with said Rates and Discounts. The Parties acknowledge that the Rates are based on the Tariffs listed on Schedule 1.52 hereof, which may fluctuate from time to time.

**6.2 Discount Levels.** On each monthly invoice, BellSouth shall reduce all Charges billed to Customer for Services by the applicable Discount for such Contract Year set forth at Appendix I.

**6.2.1** Charges billed to Customer under other Contract Service Arrangements or Special Service Arrangements, or for WATSSaver, end user common line charges, Flex Serv service and special access are not eligible for Discounts.

**6.2.2 Bonus Discount.** Customer shall also be entitled to, and BellSouth shall give Customer, a discount (in addition to the Discount) equal to twenty-one percent (21%) of the monthly Charges for Services (the "Bonus Discount") billed to Customer during any three (3) months of the Term prior to the revised Effective Date established pursuant to Section 6.12.4(i) hereof. At anytime and from time to time during the Term until the Bonus Discount is exhausted, Customer may notify BellSouth in writing of the monthly invoice(s) for Services to which it elects, in its sole discretion, to have the Bonus Discount applied. Upon receipt of Customer's written election, BellSouth shall promptly calculate a credit in an amount equal to all Charges on such monthly invoice(s) multiplied by the Bonus Discount, and shall apply this credit to reduce Charges on Customer's invoice for the next immediately following billing cycle.

**6.3 Other Customer Rates.** In the event BellSouth at any time during the Term provides any Other Customers more favorable rates, terms or conditions than those available at that time to Customer under this Agreement, BellSouth shall promptly offer to Customer a new Contract Service Arrangement that includes the more favorable rates, terms or conditions. Such rates, terms or conditions shall be retroactive to the date such lower rates, terms and conditions became effective for such Other Customer. For purposes of determining whether any Other Customer is receiving more favorable rates, terms or conditions, the factors that BellSouth will take into consideration in good faith include, but are not limited to, the service mix, geographic factors and BellSouth's margins therefor.

**6.3.1 Notice.** BellSouth shall notify Customer in writing, within thirty (30) days of the effective date thereof, of Other Customer rate decreases described in this Section 6.3 and the intended effective date thereof; provided however, BellSouth's failure to so notify Customer shall not affect Customer's right to receive credit adjustments to its Charges based on same.

**6.3.2 Retroactive Effect.** BellSouth shall promptly reflect any adjustment or credit to Charges in favor of Customer pursuant to Other Customer's more favorable rates, terms or conditions on Customer's invoice on the next immediately following billing cycle, retroactive to the date said Other Customer's more favorable rates, terms or conditions became effective; provided, however, that nothing in this Section 6.3.2 shall be construed as limiting Customer's remedies under Sections 12 and 13 hereof. The ARC for the remainder of the Term shall also be adjusted downward, effective as of the date such Other Customer's rates, terms or conditions become effective, to reflect any decrease in Customer's Rates. Additionally, the Discount shall be reduced by a percentage equal to the percentage that the ARC is reduced.

**6.4 Most Favored Customer.** BellSouth shall review the rates, terms and conditions of Other Customers at least one (1) time per Contract Year to ensure that Customer's Charges are in accordance with Section 6.3 and, upon completion of such review, shall make any corresponding adjustments or credits to Customer's Charges within the billing cycle immediately following such review, retroactive to the time such Other Customer rates became effective.

**6.5 Third Party Services.** If at any time after the twenty fourth (24th) month of the Term, Customer is offered a bona fide proposal for Third Party Services at rates that are at least 20% percent less than the Rates for any or all of the Services for a volume commitment equal to or less than the ARC ("Proposal"), Customer shall provide BellSouth notice of the Proposal ("Competitive Notice"), together with information reasonably sufficient to validate the terms, rates and volume commitments of the Proposal, thereby giving BellSouth the right and option ("Option") to respond to the Proposal as described herein; provided, however, Customer shall not be required to disclose the identity of the Person making the Proposal or to disclose any other information that would violate any confidentiality obligations to such Person.

**6.5.1** Upon receipt of a Competitive Notice, BellSouth may exercise its Option by delivering Customer a written proposal for provision of Services at rates ("Revised Rates") that are no greater than fifteen (15%) higher than the rates in the Proposal.

**6.5.2** BellSouth shall have fourteen (14) Business Days from its receipt of the Competitive Notice to deliver to Customer notice in writing of its exercise of the Option. BellSouth shall have an additional thirty (30) consecutive days after delivery of its notice of exercise of the Option to deliver its written alternative proposal, together with such Revised Rates, to Customer.

**6.5.3** If BellSouth elects not to exercise the Option within fourteen (14) Business Days of its receipt of the Competitive Notice, Customer may, at its sole option and discretion, by written notice to BellSouth, discontinue use of the Services ("Replaced Services") to be replaced by the Third Party Services without liability of any kind, including without limitation, any Termination Charges, Termination Liability Charges, Underutilization Charges or any other similar charges made by BellSouth pursuant to this Agreement, to any Tariff(s) or to any other agreement or instrument. Upon such discontinuation the ARC for each year or part thereof for the remainder of the Term shall be deemed automatically reduced, effective as of the date of the Competitive Notice, by an amount equal to what the total Charges for the Replaced

Services would have been for the Service Period(s) applicable thereto. Additionally, the Discount shall be reduced by a percentage equal to the percentage that the ARC is reduced.

**6.5.4** If BellSouth exercises the Option, the Rates shall be deemed automatically reduced to the Revised Rates and any Charges for the Services to which the Revised Rates will apply shall automatically be readjusted to reflect such decrease, retroactive to the date of the Competitive Notice. Additionally, the ARC for each year or part thereof for the remainder of the Term shall be deemed automatically reduced, effective as of the date of the Competitive Notice, by an amount equal to the difference between (i) an amount equal to what Customer's Charges for such Service(s) would have been for the Service Period(s) applicable thereto if calculated at the Rates and (ii) an amount equal to Customer's Charges for such Service(s) for such Service Period(s) as if calculated at the Revised Rates.

**6.6 Rates and Charges for Moves, Adds, Changes and Expedites.** Except as otherwise provided in this Section 6, Rates for Moves, Adds, Changes and Expedites are set forth in the applicable Tariffs from time to time in effect during the Term.

**6.7 Interruptions and Credits.**

**6.7.1** Except where caused by negligence of Customer or failure of facilities furnished by the Customer, Customer shall be entitled to Interruption Credits as set forth at Schedule 6.7 for any and all Interruptions. Interruption Credits shall accrue from the time that Customer gives oral or written notice to BellSouth that an Interruption has occurred, until the time that said Interruption has been cured to Customer's reasonable satisfaction. Customer agrees to promptly release any affected circuits for testing and maintenance upon BellSouth's reasonable request. Interruption Credits will not apply to Interruptions scheduled in advance by Customer or BellSouth, subject to reasonable prior notice thereof to the other Party. BellSouth shall apply all Interruption Credits accrued within a calendar month to Customer's Charges on the next following billing cycle.

**6.7.2** If BellSouth's standard test procedures or Customer's own audit(s) establish that an installed line, circuit, system or other Service(s) component does not perform in accordance with the Specifications, then (i) BellSouth shall immediately commence and diligently pursue efforts to correct such Deficiency; and (ii) Customer shall be entitled to Interruption Credits until any Interruption resulting from such Deficiency has been corrected to Customer's reasonable satisfaction.

**6.8 Business Downturn or Divestiture**

Notwithstanding the provisions of this Agreement regarding Customer's failure to satisfy the ARC, in the event Customer:

**6.8.1** (i) Experiences a business downturn beyond Customer's control that results in a customer end-user growth rate that is less than one-half of the projected average growth of the PCS industry based on U.S. Commerce Department statistics (or other generally

recognized statistics for the PCS industry) (such downturn hereinafter referred to as a "Business Downturn"), or (ii) Customer (or its parent) sells one or more of its Affiliates or operating divisions or eliminates product lines or areas of geographic coverage (such sale or elimination hereinafter referred to as a "Sale"); and

**6.8.2** As a result of such Business Downturn or Sale, Customer reasonably believes that its Charges for use of Services during any Contract Year will be less than the ARC; and

**6.8.3** Customer certifies in writing to BellSouth, with reasonably detailed support, no later than thirty (30) days prior to any Anniversary Date of said Contract Year, that Customer will not substitute such diminished usage of Services with telecommunications services provided by any other carrier unaffiliated with BellSouth, and provides to BellSouth such other nonproprietary information supporting Customer's claim of Business Downturn or Sale reasonably requested by BellSouth; then:

**6.8.4** BellSouth shall reduce Customer's ARC for each year for the remainder of the Term, based on, as applicable, either (i) Customer's average monthly Charges or (ii) the divested Affiliate's or operating division's average monthly Charges for Services, in either case measured by the average of the three (3) full calendar months immediately preceding the Business Downturn or Sale, respectively. The revised ARC will become effective as of the first calendar day of the Contract Year immediately following the Contract Year during which the Business Downturn or Sale occurs, (i) the revised ARC will automatically replace the original ARC under this Agreement, (ii) Customer shall remain liable for Charges based on the revised ARC, and (iii) Customer and BellSouth shall in good faith negotiate a reduction in the Discounts commensurate with the reduction in the ARC.

**6.9 Taxes.** Customer shall be responsible for payment of applicable taxes for Services provided hereunder, subject to the condition that all such taxes be separately and clearly identified in detail on BellSouth's invoices; provided, however, Customer shall not be liable for payment of federal, state or local excise, sales, use or similar taxes from which the Services are exempt. Notwithstanding any provision hereof, BellSouth shall be fully and solely responsible for appropriate identification, segregation, and other applicable compliance measures required to ensure the availability of such tax exemptions for Services ("Exempt Services") provided hereunder, and shall promptly reimburse Customer (in the form of a credit to Customer's account) for the full amount of any such taxes improperly billed to Customer for any Exempt Services.

**6.10 Disputed Charges.** Customer shall make a separate claim in writing, with reasonable support, for any credit for erroneously billed Rates, Charges, Discounts, Termination Liability Charges, Termination Charges, Underutilization Charges, Interim Underutilization Charges or other reasonable credit to which Customer believes itself to be entitled, and BellSouth shall promptly address and resolve each such claim. The Parties shall each promptly appoint a duly authorized representative to address such disputes, and shall each exercise good faith efforts to promptly resolve any and all such claims. BellSouth may neither suspend the

provision of Service, nor terminate this Agreement during the pendency of any such dispute. Any unpaid disputed amounts subsequently resolved in BellSouth's favor will be subject to late payment charges and interest charges in accordance with Section 3.5.3. For any disputed amounts that have been paid to BellSouth that are resolved in favor of the Customer and subsequently credited to the Customer's account, BellSouth will apply interest to the credit at rate equal to that applied to late payments as set forth in Section 3.5.3. If, their mutual good faith efforts notwithstanding, the Parties are unable to resolve any payment dispute within thirty (30) calendar days following Customer's written notice made pursuant to this Section 6.10, then the matter will be submitted to binding arbitration as set forth in Section 15.9.

## **6.11 Annual Revenue Commitment, True-Up and Underutilization**

**6.11.1 Annual True-Up.** Within ninety (90) days after the end of each Contract Year BellSouth will compare all Customer's actual charges (before application of any Discounts, Bonus Discounts, V&T Discounts or Interruption Credits provided pursuant to this Agreement or to any applicable Tariff) with the applicable ARC for such Contract Year (said comparison referred to herein as the "Annual True-Up"). The following charges to Customer ("ARC Charges") will contribute to meeting the ARC: (i) Charges for the Services (before application of any Discounts, Bonus Discounts, V&T Discounts or Interruption Credits provided pursuant to this Agreement or to any applicable Tariff); (ii) charges for interstate special access; (iii) charges for FlexServ service; (iv) charges for SS-7 services; (v) charges for 411 operator services; (vi) charges for 911 and E911 services; (vii) charges for call completion services and (viii) Termination Liability Charges.

**6.11.2 Failure to Achieve ARC.** Customer agrees that if it fails to meet its ARC as measured by the Annual True-Up for any particular Contract Year ("Underutilization"), BellSouth shall bill and Customer agrees to pay an amount equal to (i) the difference, between (x) the amount of ARC Charges billed to Customer for the preceding Contract Year and (y) its ARC for such preceding Contract Year, multiplied by (ii) the Discount (said difference referred to herein as the "Underutilization Charge"). BellSouth must invoice Customer for any Underutilization Charge within sixty (60) days of the Annual True-Up and failure to do so shall constitute a waiver of said Underutilization Charge. Customer shall pay said Underutilization Charges in accordance with Section 3.5.3 hereof. The Parties agree that Customer's failure to meet its ARC for a Contract Year is not an Event of Default under this Agreement.

**6.11.2.1** In the event the ARC is adjusted due to a Business Downturn, Sale, Audit, Comparable Services replacement or for any other reason set forth in this Agreement, the ARC contained in Appendix I shall be reduced by a proportionate amount.

**6.11.2.2** Customer shall not be subject to Underutilization Charges or Termination Liability Charges if Underutilization occurs pursuant to:

- (i) Termination, Early Termination or Partial Discontinuance without liability by either Party, or

- (ii) An Event of Default with regard to BellSouth's obligations under this Agreement or an Adverse Regulatory Determination as set forth in Section 14.1, or
- (iii) A Force Majeure event as described in Section 10 hereof.

## **6.12 Customer's Volume and Term Option**

**6.12.1 The Option.** BellSouth hereby grants to Customer and Customer accepts from BellSouth, the unconditional, irrevocable right and option (the "V&T Option"), to replace the Annual Revenue Commitments and Discounts set forth in Appendix "I" of this Agreement with the Annual Revenue Commitments and Discounts set forth in Appendix "I-A" of this Agreement, all as set forth in this Section 6.12.

**6.12.2 Term of V&T Option.** The term of the V&T Option (the "V&T Option Term") shall commence on the date of this Agreement and extend through and be irrevocable until 5:00 p.m. on the one thousand eight hundred and twenty sixth (1,826<sup>th</sup>) day after the date set forth on page one (1) of this Agreement.

**6.12.3 Exercise of Option.** Customer may exercise the V&T Option by giving written notice, substantially in the form attached hereto as Schedule 6.12 (the "V&T Notice"), to BellSouth at anytime during the V&T Option Term in accordance with the notice provisions of Section 15.4 of this Agreement.

**6.12.4 Effect of Customer's Exercise of the V&T Option.** Upon Customer's exercise of the V&T Option:

- (i) the Effective Date shall be automatically changed to the first day of the first calendar month immediately following the thirtieth (30<sup>th</sup>) day after the date of Customer's V&T Notice;
- (ii) the Term of the Agreement shall be automatically changed to a period of five (5) years commencing with the revised Effective Date as changed in preceding Section 6.12.4(i);
- (iii) Appendix "I" shall be automatically amended by replacing the Annual Revenue Commitments and Discounts set forth therein with the Annual Revenue Commitments and Discounts set forth in Appendix "I-A" and thereafter, all references in this Agreement to Appendix "I", shall refer to Appendix "I", as so amended; (iv) Customer will be entitled to the V&T Discounts described in Section 6.12.6 hereof; and (v) BellSouth shall perform an Interim True-Up in accordance with Section 6.12.5 hereof.

### **6.12.5 Interim True-Up and Interim Underutilization**

**6.12.5.1 Interim True-Up.** No later than ninety (90) days after the date of Customer's V&T Notice, BellSouth, following written notice to Customer, shall compare (i) all Customer's actual charges (before application of any Discounts, Bonus Discounts or Interruption Credits provided pursuant to this Agreement or to any applicable Tariff) for the partial Contract Year ending on the last day of the calendar month immediately preceding the revised Effective Date (as changed in preceding Section 6.12.4(i)) (said partial Contract Year hereinafter referred to as the "Partial Contract Year") with (ii) the applicable Pro Rata ARC (as hereinafter determined) for such Contract Year (said comparison referred to herein as the "Interim True-up"). For purposes of this Section 6.12.5, the Pro Rata ARC is an amount expressed in dollars, determined by dividing (a) the applicable original ARC (before any amendment to Appendix "I" pursuant to Section 6.12.4 hereof) for the Contract Year in which the V&T Option was exercised by (b) twelve (12), and by (c) multiplying the quotient by the number of full calendar months in the Partial Contract Year.

**6.12.5.1.1 Contributory Charges to Pro Rata ARC.** The following charges to Customer ("Pro Rata ARC Charges") for the Partial Contract Year will contribute to meeting the Pro Rata ARC: (i) Charges for the Services (before application of any Discounts, Bonus Discounts or Interruption Credits provided pursuant to this Agreement or to any applicable Tariff); (ii) charges for interstate special access; (iii) charges for FlexServ service; (iv) charges for SS-7 services; (v) charges for 411 operator services; (vi) charges for 911 and E911 services; (vii) charges for call completion services and (viii) Termination Liability Charges.

**6.12.5.2 Failure to Achieve Pro Rata ARC.** Customer agrees that if it fails to meet or exceed its Pro Rata ARC as measured by the Interim True-Up for the Partial Contract Year, BellSouth may bill and Customer agrees to pay an amount equal to (i) the difference, if any, between (x) the amount of Pro Rata ARC Charges billed to Customer for the Partial Contract Year and (y) its Pro Rata ARC for the Partial Contract Year, multiplied by (ii) the applicable Discount for such Contract Year (said difference referred to herein as the "Interim Underutilization Charge"). BellSouth must invoice Customer for any Interim Underutilization Charge within ninety (90) days of the Interim True-Up and failure to do so shall constitute an automatic waiver of said Interim Underutilization Charge. Customer shall pay said Interim Underutilization Charges in accordance with Section 3.5.3. hereof. The Parties agree that Customer's failure to meet its Pro Rata ARC for the Partial Contract Year is not an Event of Default under this Agreement.

**6.12.6 Customer's V&T Discount.** If Customer exercises the V&T Option, then Customer shall be entitled to, and BellSouth shall give Customer, a discount (in addition to the Discount), equal to thirty-two percent (32%) (the "V&T Discount") of Charges for Services billed to Customer during any four (4) months of the Term. At anytime and from time to time during the Term (but in no event more than once in any Contract Year), Customer may notify BellSouth in writing of the monthly invoice for Services to which it elects, in Customer's sole discretion, to have the V&T Discount applied. Upon receipt of Customer's written election, BellSouth shall promptly (i) calculate a credit in an amount equal to all Charges on such monthly



invoice multiplied by the V&T Discount, and shall apply this credit to reduce Charges on Customer's invoice for Services for the next immediately following billing cycle.

## **7. CONFIDENTIAL INFORMATION**

**7.1 Nondisclosure.** The Parties shall (i) maintain the confidentiality of this Agreement, and the information and materials of the other that may be reasonably understood, from legends, the nature of such information itself and/or the circumstances of such information's disclosure, to be confidential and/or proprietary thereto or to third parties to which either of them owes a duty of nondisclosure (collectively, "Confidential Information"); (ii) take reasonable action in connection therewith, including at least the action that each takes to protect the confidentiality of its comparable proprietary assets; (iii) to the extent within their respective possession and/or control, upon termination of this Agreement for any reason, immediately return to the provider thereof all Confidential Information not licensed or authorized to be used or enjoyed after termination or expiration hereof, and (iv) with respect to any person to which disclosure is contemplated, require such person to execute an agreement providing for the treatment of Confidential Information set forth in clauses (i) through (iii). The foregoing shall not require separate written agreements with employees and agents already subject to written agreements or written policies substantially conforming to the requirements of this Section, nor with legal counsel, certified public accountants, or other professional advisers under a professional obligation to maintain the confidences of clients.

**7.2 Exceptions to Nondisclosure.** Notwithstanding the foregoing, the obligation of a person to protect the confidentiality of any Confidential Information or materials shall terminate as to any information or materials which: (i) are, or become, public knowledge through no act or failure to act of such person; (ii) are publicly disclosed by the proprietor thereof; (iii) are lawfully obtained without obligations of confidentiality by such person from a third party after reasonable inquiry regarding the authority of such third party to possess and divulge the same; (iv) are independently developed by such person from sources or through persons that such person can demonstrate had no access to Confidential Information; or (v) are lawfully known by such person at the time of disclosure other than by reason of discussions with or disclosures by the Parties. In the event disclosure of Confidential Information is required by any Regulatory Authority, the disclosing Party shall (i) promptly advise the other Party; and (ii) seek confidential treatment by such Regulatory Authority of any disclosed Confidential Information to the extent available in the applicable jurisdiction.

## **8. REPRESENTATIONS, WARRANTIES AND COVENANTS**

BellSouth represents, warrants, and covenants that:

**8.1 Compliance with Laws.** The provision of Services hereunder and under the Tariffs is and shall be throughout the Term in full compliance with all applicable laws, including without limitation all applicable rules, regulations and policies of all Regulatory Authorities.

The Rates recover BellSouth's costs, meet applicable standards of rate regulation, and are otherwise in full compliance with all applicable review standards issued by all Regulatory Authorities.

**8.2 Compliance with Specifications.** Upon Acceptance by Customer of any Services, such Services shall continuously operate strictly in accordance with the Specifications throughout the Term.

**8.3 Non-Suspension of Services.** Except by reason of an Event of Default by reason of Customer's non-payment of undisputed charges, BellSouth shall not suspend or cancel Services to any Site; provided, however, this provision shall not apply to Interruptions scheduled by BellSouth with Customer in advance for testing purposes. This provision shall survive the termination of this Agreement.

**8.4 Legal Authority and Enforceability.** (i) The execution, delivery and performance of this Agreement (together with regulatory filings related thereto), and any collateral agreements related thereto, and the consummation of all transactions contemplated hereby, have been duly authorized by all requisite corporate action; (ii) this Agreement and all other agreements and obligations entered into and undertaken in connection with the transactions contemplated hereby to which BellSouth is a party constitute the valid and legally binding obligations of BellSouth, enforceable against BellSouth in accordance with their respective terms; (iii) the execution, delivery and performance by BellSouth of this Agreement and the agreements provided for herein (together with any regulatory filings related thereto), and the consummation of the transactions contemplated hereby and thereby, will not, with or without the giving of notice or the passage of time or both, (x) violate the provisions of any law, rule or regulation applicable to BellSouth, (y) violate any judgment, decree, order or award of any court, or Regulatory Authority binding upon BellSouth, or (z) conflict with or violate the terms of any other agreement by which BellSouth or its property is bound.

**8.5 Waiver of Rights.** BellSouth waives and relinquishes, to the maximum extent permitted by law, any and all rights it has or may have at any time during the Term, at law or in equity, to raise or assert in any manner, at any time, in any forum, action or proceeding, the "filed rate doctrine" or any similar argument for the purpose of challenging or contesting the validity or enforceability of this Agreement, all amendments and modifications hereto, the provision of Services hereunder, or the Rates and Discounts set forth herein.

**8.6 Year 2000 Compliance.** Each Party shall implement a program to ensure that all software, hardware and related materials delivered by one Party to the other Party, connected with by one Party to the other Party or supplied by one Party to the other Party in furtherance of the terms and conditions specified in this Agreement: (i) will record, store, process and display calendar dates falling on or after January 1, 2000, with the same functionality as such software records, stores, processes and displays calendar dates falling on or before December 31, 1999; and (ii) will include, without limitation, date, data and century recognition calculations that accommodate same century and multi-century formulas and date values.

## **9. INTELLECTUAL PROPERTY INDEMNIFICATION**

### **9.1 Intellectual Property Indemnification.**

9.1.1 BellSouth represents and warrants that neither the software, hardware, or any other materials provided to Customer hereunder or utilized by BellSouth in operation of the Services will infringe upon any patent, copyright, trade secret or other proprietary right of a third party (collectively, "Proprietary Rights"). BellSouth shall defend, settle, or otherwise manage at its sole cost and expense any claim, suit or action against the Customer or any End User, or any of their respective directors, officers, employees or agents (collectively "Indemnitees") for infringement of any Proprietary Right arising directly or indirectly from an Indemnatee's use of the Services or use of any other materials furnished hereunder by BellSouth. BellSouth shall have the sole right to conduct the defense of any such claim, suit or action and all negotiations for its settlement or compromise. BellSouth agrees to indemnify and hold Indemnitees harmless from and against any claim, action, loss, damage, liability or expenses, including without limitation reasonable attorney's fees, arising or incurred directly or indirectly from or in connection with any such claim, suit or action.

9.1.2 Customer agrees to give BellSouth prompt written notice of any written threat, warning, or notice of any such claim, suit or action related to the Services and to provide copies of applicable papers served upon or received by Customer. BellSouth agrees to give the Customer prompt written notice of any written threat, warning or notice of any such claim, suit or action against BellSouth or, to BellSouth's knowledge, against any user or supplier of components of software utilized in the Services which could have a material adverse impact on the price, availability, quality or performance of the Services or Indemnatee's ability to use the Services.

9.1.3 If the use or provision of the Services or other materials furnished hereunder is enjoined, BellSouth shall, at its own expense, either: (i) procure for Customer the right to continue using the Services or materials; or (ii) modify the Services and/or materials to become non-infringing (provided that such Services as modified remain, in the opinion of Customer, functionally equivalent to the Services); or (iii) substitute for the Services functionally equivalent (in the reasonable opinion of Customer), non-infringing Services and/or materials provided by BellSouth at no additional charge to Customer.

## **10. FORCE MAJEURE**

**10.1 General.** Neither Party shall be liable to the other for any delay, impairment or failure to perform during any period in which such delay, impairment or failure is (i) due to causes beyond its control and reasonable anticipation, and (ii) without such Party's fault or negligence (hereinafter a "Force Majeure"), including, but not limited to, fires, floods, epidemics, third-party negligence, quarantine restrictions, war, labor disputes and freight embargoes; provided, however, that Interruption Credits shall fully apply to the Customer's Charges throughout any Force Majeure.

**10.2 Duty to Mitigate.** Each Party whose performance is impaired under this Section 10 shall exercise its best efforts (including interconnection and cooperation with other carriers) to mitigate the extent of such delay or failure, including those arising from labor disputes or strikes.

## **11. RELATIONSHIP OF PARTIES**

**11.1 Representations and Authority.** Nothing in this Agreement shall be construed as creating a joint venture or partnership between the Parties. Neither Party has or shall have any authority to bind, assume any obligation for or incur any debt on behalf of the other Party. Nothing in this Agreement shall be construed as preventing Customer from entering into agreement(s) with other carrier(s) or vendor(s) for the provision of services which are the same or similar to Services.

## **12. TERMINATION**

**12.1 Early Termination.** Customer shall have the right at any time during the Term hereof to terminate this Agreement and all outstanding Purchase Orders upon the following terms and conditions specified below:

**12.1.1 Customer's Election and Termination Charges.** If Customer elects to terminate this Agreement prior to the end of the Term for reasons other than as provided in Section 12.2 hereof, Customer shall give BellSouth at least sixty (60) days advance written notice of such termination. In such event, BellSouth may invoice and Customer shall thereupon pay Termination Charges equal to:

(i) The amount of the Discounts received by Customer during the Term of this Agreement, or for the twelve (12) months immediately preceding the effective date of Customer's termination, whichever is less;

(ii) The prorated portion of the Agreement implementation and tracking costs incurred by BellSouth, calculated as follows: (i) multiply \$34.61 by the total number of Earning Account Numbers (as hereinafter defined) listed on Customer's invoice for the last billing cycle immediately prior to the effective date of Customer's termination; (ii) add fixed costs of \$6,969.83 to the product thereof; and (iii) multiply the resulting total by a fraction, the numerator of which shall be equal to the number of months remaining in the Term after the Termination Date and the denominator of which shall be sixty (60); and

(iii) Underutilization Charges, if any, calculated pursuant to Section 6.11 hereof, for the Contract Year in which the termination occurs, if the Termination Date is prior to the last day of such Contract Year.

For purposes of this Section 12.1.1, an Earning Account Number is a revenue producing account number that can be in the form of a telephone number or a miscellaneous account number. Generally, there is one Earning Account Number per circuit (e.g. DS-1) or one Earning Account Number per segment (e.g. SMARTRing). All Earning Account Numbers are listed on Customer invoices.

**12.1.2** Customer acknowledges that it has options to purchase telecommunications services from service providers other than BellSouth and that it has instead chosen BellSouth to provide Customer the Services pursuant to this Agreement. Customer, therefore, agrees that if it terminates this Agreement, Customer will be responsible for Termination Charges set forth in Section 12.1. Customer, however, will not be responsible for Termination Charges if a certified reseller of BellSouth local service resells this Agreement to Customer and such reseller executes a written document agreeing to assume all of Customer's obligations to BellSouth under the Agreement.

**12.1.3 Sole Termination Charge.** The application of the Termination Charges and Termination Liability Charges pursuant to this Section 12.1 and to Section 12.4 respectively, shall be in lieu of any other Termination Charges, Underutilization Charges or other similar charges made by BellSouth pursuant to this Agreement, to any Tariff(s) or to any other agreement or instrument.

**12.2 Termination by Customer Without Liability.** Any other provision of this Agreement to the contrary notwithstanding, Customer may, but shall not be obligated to, terminate this Agreement, in whole or in part, upon sixty (60) days advance written notice to BellSouth, without liability of any kind whatsoever, including without limitation, Underutilization Charges, Termination Charges, Termination Liability Charges or any other similar charges made by BellSouth pursuant to this Agreement, to any Tariffs or to any other agreement or instrument, in the event of:

**12.2.1** The occurrence of an Event of Default with reference to BellSouth's obligations, as set forth in Section 13.1.1; or

**12.2.2** An Adverse Regulatory Determination as set forth in Section 14.1, (upon the occurrence of which Customer may also exercise any election set forth in Section 14.1 hereof).

**12.3 Partial Discontinuance Without Liability.** Customer may discontinue purchase of any Service Element as a result of Chronic Interruptions (as defined below) at any time, upon thirty (30) days advance written notice to BellSouth, without liability of any kind whatsoever, including without limitation, any Underutilization Charges, Termination Charges, Termination Liability Charges or any other similar charges made by BellSouth pursuant to this Agreement, to any Tariff(s) or to any other agreement or instrument. If Customer discontinues purchase of a Service Element due to Chronic Interruptions and does not replace such Service Element with substitute service from BellSouth, the ARC for each year or part thereof for the remainder of the Term shall be automatically reduced, effective as the date Customer discontinues its purchase of

said Service Element, by an amount equal to what the total Charges for the discontinued Service Element would have been for the entire remaining Service Period for the discontinued Service Element. A Service Element shall be deemed to undergo "Chronic Interruptions" upon the occurrence of (i) three (3) Interruptions of said Service Element; or (ii) cumulative Interruptions (in the aggregate) of said Service Element of twenty four (24) or more hours, in either case within any one (1) month of the Term.

**12.4 Partial Termination of Service With Liability.** Customer shall have the right, at anytime and from time to time during the Term hereof, to discontinue its purchase of any Service or Service Element upon no less than thirty (30) days advance written notice to BellSouth. If Customer elects to discontinue its purchase of a Service or Service Element pursuant to this Section, it shall be liable to BellSouth for the Termination Liability Charges set forth in the Tariffs listed on Schedule 12.4 hereof, payable as follows:

**12.4.1 Annual Calculation of Termination Liability Charges.** Within ninety (90) days after the end of each Contract Year, BellSouth will calculate Termination Liability Charges for all Services or Service Elements discontinued by Customer during the preceding Contract Year. BellSouth shall bill and Customer agrees to pay, pursuant to Section 3.5.3 hereof, after application of the Discount, all undisputed Termination Liability Charges for the preceding Contract Year. BellSouth agrees to send Customer copies of all records and accounting information supporting its calculation of Termination Liability Charges along with Customer's invoice for such Termination Liability Charges. BellSouth must invoice Customer for any Termination Liability Charges within sixty (60) days of the aforesaid calculation and failure to do so shall constitute a waiver of said Termination Liability Charges.

**12.4.2 Sole Charge.** Other than as set forth in Section 12.1 hereof, the application of Termination Liability Charges pursuant to this Section 12.4 constitutes BellSouth's sole remedy for Customer's Partial Termination of Service and is in lieu of any other Termination Charges, Underutilization Charges, Interim Underutilization Charges or any other similar charges made by BellSouth pursuant to this Agreement, to any Tariff or to any other agreements or instrument.

**12.5 Transitional Support.** In the event Customer elects to exercise termination, Early Termination, Partial Termination of Service, or Partial Discontinuance of this Agreement by reason of (i) an Event of Default of BellSouth's obligations, (ii) an Adverse Regulatory Determination, or (iii) as otherwise authorized herein, BellSouth covenants to reasonably cooperate in facilitating Customer's conversion of Services to ~~Third~~ <sup>Party</sup> Party Services, including the continued provision of Services to Customer at the Rates for a period of up to four (4) months following the date of termination or discontinuance, until such conversion is completed, in a manner reasonably satisfactory to Customer. 21  
X/10  
11/02

### **13. DEFAULT AND REMEDIES**

**13.1 Events of Default.** Upon ten (10) days prior written notice either Party may terminate this Agreement or any Purchase Order(s) issued hereunder, in whole or in part, without cost or liability to the terminating Party, or may exercise any other right or remedy available to it, upon the occurrence of an Event of Default by the other, as hereinafter described; provided, however, that the non-defaulting Party seeking termination shall have previously given the other Party notice of such Event of Default and forty-five (45) days to cure.

**13.1.1 Default by BellSouth.** An Event of Default shall have occurred with respect to BellSouth if:

**13.1.1.1** BellSouth has breached any of its material obligations, covenants or warranties or made any material misrepresentation hereunder; or

**13.1.1.2** Customer has exercised its right of Partial Discontinuance pursuant to Section 12.3 with respect to one hundred (100) or more Service Element within any period of six (6) consecutive calendar months.

**13.1.2 Default by Customer.** An Event of Default shall have occurred with respect to Customer if (i) Customer has breached any of its material obligations or warranties or made any material misrepresentation hereunder, or (ii) Customer shall have failed to make any undisputed payment due in accordance with the provisions hereof within thirty (30) days after receipt of written notice of delinquency.

**13.1.3 Default of Either Party.** An Event of Default shall have occurred with respect to either Party to this Agreement if such Party:

**13.1.3.1** Ceases to do business as a going concern;

**13.1.3.2** Makes a general assignment for the benefit of, or enters into any composition or arrangement with creditors;

**13.1.3.3** Is unable to or admits in writing its inability to pay its debts as they become due;

**13.1.3.4** Authorizes, applies for, or consents to the appointment of a trustee or liquidator of all or a substantial part of its assets or has proceedings seeking such appointment commenced against it which are not terminated within sixty (60) days of such commencement;

**13.1.3.5** Files a voluntary petition under any bankruptcy or insolvency law or files a voluntary petition under the reorganization or arrangement provisions

of the laws of the United States pertaining to bankruptcy or any similar law of any jurisdiction or has proceedings under any such law instituted against it which are not terminated within sixty (60) days of such commencement; or

13.1.3.6 Has any substantial part of its property become subject to any levy, seizure, assignment or sale for or by any creditor or governmental agency without said levy, seizure, assignment or sale being released, lifted, reversed or satisfied within ten (10) days thereafter.

#### **14. ADVERSE REGULATORY DETERMINATION AND REGULATORY CONSIDERATIONS**

**14.1 Adverse Regulatory Determination.** ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, IF ANY REGULATORY AUTHORITY DETERMINES, AT ANY TIME, THAT THIS AGREEMENT IN WHOLE OR IN PART IS UNLAWFUL OR UNENFORCEABLE BY CUSTOMER, ("ADVERSE REGULATORY DETERMINATION") CUSTOMER SHALL HAVE THE RIGHT, AT ITS SOLE OPTION AND DISCRETION, (i) TO TERMINATE THIS AGREEMENT, IN WHOLE OR IN PART, INCLUDING ANY PURCHASE ORDER ISSUED HEREUNDER, IN WHOLE OR IN PART, IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 12.2 AND 12.3 HEREOF, UPON NO LESS THAN TEN (10) DAYS PRIOR WRITTEN NOTICE TO BELLSOUTH, (ii) TO CONTINUE TO TAKE THE SERVICES UNDER ANY LAWFUL RATES, TERMS AND CONDITIONS SET FORTH IN ANY TARIFF, AND UPON CUSTOMER'S ELECTION OF ALTERNATIVE (ii) PRECEDING, SAID NEW RATES, TERMS AND CONDITIONS WILL AUTOMATICALLY REPLACE THE RATES, TERMS AND CONDITIONS SET FORTH HEREIN, OR (iii)) TO RENEGOTIATE THE RATES, TERMS AND CONDITIONS OF A REVISED CSA AGREEMENT (INCLUDING THE RATES, TERMS AND CONDITIONS AVAILABLE TO OTHER CUSTOMERS), TO BE FILED WITH THE APPLICABLE REGULATORY AUTHORITIES. UPON CUSTOMER'S ELECTION TO EXERCISE ITEM (iii) PRECEDING, BELLSOUTH COVENANTS AND AGREES TO USE ITS BEST COMMERCIALY REASONABLE EFFORTS TO RENEGOTIATE SUCH RATES, TERMS AND CONDITIONS OF A REVISED CSA AGREEMENT, AND TIME WILL BE OF THE ESSENCE IN SUCH RENEGOTIATION AND FILING.

#### **15. MISCELLANEOUS**

**15.1 Advertising or Publicity.** Except as otherwise agreed to in writing between the Parties, neither Party shall advertise or publish any materials related to this Agreement.

**15.2 Assignment by Customer.** Customer shall have the right to assign this Agreement to any CMRS Affiliate of Customer. This Agreement shall be binding upon and inure to the benefit of Customer and its successors and assigns. This Agreement shall be deemed



automatically assigned to any successor-in-interest to Customer created by merger, acquisition, consolidation or divestiture.

**15.3 Assignment by BellSouth.** BellSouth shall neither assign its rights nor delegate its obligations hereunder to any third party without the express written consent of Customer, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, BellSouth may assign or delegate its obligations hereunder to any Affiliate of BellSouth without the prior written consent of the Customer but upon reasonable written notice to Customer; provided, however, such assignment shall not relieve BellSouth of any liabilities hereunder. This Agreement shall be binding upon and inure to the benefit of BellSouth and its successors and assigns.

**15.4 Notices.** Any notice required or permitted to be given hereunder shall be (a) in writing, (b) effective upon receipt, and (c) delivered by one of the following means: (i) by personal delivery; (ii) by prepaid, overnight package delivery or courier service; (iii) by the United States Postal Service, first class, certified mail, return receipt requested, postage prepaid; or (iv) by prepaid telecopier, telex, or other similar means of electronic communication (followed by confirmation on the same or following day by mail as aforesaid). All notices given under this Agreement shall be addressed, in the case of Customer, as follows:

Tritel Communications, Inc.  
111 East Capital Street, Suite 500  
Jackson, Mississippi 39201  
Attn: Mr. Roland Patterson  
Title: Vice President, Network Systems

with a copy to:

Gerry, Friend & Saprnov, LLP  
Three Ravinia Drive  
Suite 1450  
Atlanta, GA 30346  
Attn: Walt Saprnov, Esq.

and to:

General Counsel  
Tritel Communications, Inc.  
111 East Capital Street, Suite 500  
Jackson, Mississippi 39201

and, in the case of BellSouth, as follows:

Eric Small  
President of Marketing-Interconnection Services  
34<sup>th</sup> Floor  
675 West Peachtree Street  
Atlanta, Georgia 30375

with a copy to:

James Franco  
Wireless Market Manager  
34A51  
675 West Peachtree Street  
Atlanta, Georgia 30375

and to:

Office of General Counsel  
BellSouth Business Systems, Inc.  
Suite 170  
1800 Century Boulevard  
Atlanta, Georgia 30345

or to such other addresses or telecopier numbers of which the Parties have been advised in writing by any of the above-described means. Personal delivery to a Party or to any officer, partner, agent, or employee of such Party at its address herein shall constitute receipt. The following shall also constitute receipt: (i) a Party's rejection or other refusal to accept notice, and (ii) the inability to deliver to a Party because of a changed address or telecopier number of which no notice has been received by the other Party. Notwithstanding the foregoing, no notice of change of address or telecopier number shall be effective until ten (10) days after the date of receipt thereof. This Section shall not be construed in any way to affect or impair any waiver of notice or demand herein provided.

**15.5 Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the following laws in the following order of priority (i) the laws of the State of Georgia, without regard to Georgia's conflict of law principles, (ii) applicable State Tariffs, and (iii) applicable State utility codes authorizing the execution and the filing of this Agreement with the applicable Regulatory Authorities in the States.

**15.6 Construction of the Agreement.** To the extent possible and reasonable, this Agreement shall be construed in conformity with and not in conflict with applicable Tariffs and regulations. Provided, however, BellSouth's obligations to provide Services at the Rates and with the Discounts and Customer's obligations to pay for Services and to remain bound for the

Term, all in accordance with the provisions herein, are to be construed as mutually dependent, in accordance with generally accepted principles of contract law and construction.

**15.7 No Waiver.** No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding on either Party unless evidenced by a written notice or amendment signed by an authorized representative of the Party to be bound.

**15.8 Disputes.** The Parties agree to attempt to resolve any dispute arising under this Agreement (including all documents incorporated herein by reference and attached hereto), under the following procedures:

**15.8.1** Each Party shall notify an appropriate representative of the dispute in writing, setting forth relevant facts and explaining why the Party believes the dispute should be resolved in its favor;

**15.8.2** Within five (5) Business Days after such notice has been given, the program managers for each Party shall meet, by conference call or in person, in an effort to resolve the dispute. If they are unable to do so, they shall prepare a joint report, detailing the reasons for the dispute and each Party's position, and shall deliver the report within five (5) Business Days after their meeting to a senior executive within each company, selected by the respective program manager.

**15.8.3** The senior executives shall meet, by conference call or in person, within ten (10) calendar days from delivery of their program managers' reports, in an effort to resolve the dispute.

**15.8.4** If the senior executives cannot resolve the dispute within thirty (30) days after receipt of their program managers' reports, then either Party may institute arbitration as hereinafter set forth.

**15.9 Arbitration.** Any controversy or claim arising out of or related to this Agreement or the breach thereof, shall be settled by binding arbitration in Atlanta, Georgia, in accordance with the Commercial Arbitration Rules of American Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**15.10 Entirety of Agreement.** This Agreement (together with all Appendices, Exhibits, Schedules and other attachments hereto (all (i) as amended from time to time and (ii) incorporated herein by this reference) and all Purchase Orders accepted by BellSouth from time to time pursuant to Section 3.3 hereof and incorporated herein thereby) constitute the entire agreement between the Parties with respect to the subject matter hereof and upon satisfaction of all regulatory approvals pursuant to Section 2.3.1 hereof, supersede all prior understandings and agreements (including without limitation any existing CSA agreements entered into by the Parties prior to the Effective Date), and may not be modified or altered except by a written instrument duly executed by the Parties.

**15.11 Severability.** Should any provision or portion of this Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, then, at Customer's sole option and discretion (i) the remaining provisions of this Agreement shall remain in full force and effect, or (ii) Customer may terminate this Agreement without liability in accordance with Section 12.2 hereof.

**15.12 Headings and Pronouns.** Headings used in this Agreement are for reference purposes only, and are not to be deemed a part of this Agreement. The recitals set forth at the outset of this Agreement shall be deemed to be a part hereof. Pronouns used herein shall be construed as masculine, feminine, or neuter, and both singular and plural, as the context may require, and the term "person" shall include an individual, corporation, association, partnership, trust, and other organization.

**15.13 Survival.** The following provisions of this Agreement shall survive termination or expiration:

15.13.1 Section 8.1, Compliance with Laws;

15.13.2 Section 8.3, Non-Suspension of Services;

15.13.3 Section 9, Intellectual Property Indemnification;

15.13.4 Section 12.1, Early Termination;

15.13.5 Section 12.3, Partial Discontinuance;

15.13.6 Section 12.4, Partial Termination;

15.13.7 Section 12.5, Transitional Support;

15.13.8 Section 14, Adverse Regulatory Determination; and

15.13.9 any other provision which by its terms or by any reasonable interpretation thereof is intended to survive termination or expiration.

**15.14 Counterparts.** This Agreement may be signed in as many counterparts as may be required for filing with Regulatory Authorities.

**15.15 Time of the Essence.** Time is of the essence in the performance by BellSouth of its obligations under this Agreement.

**15.16 Remedies Cumulative and Non-Exclusive.** Unless otherwise expressly limited or excluded herein, all remedies provided in this Agreement are cumulative and non-exclusive, and are in addition to all other remedies available at law or in equity, including without limitation any actions for damages.

15.17 Further Assurances. From and after the date of this Agreement, each of the Parties shall, from time to time, at the request of the other Party and without further consideration, do, execute and deliver, cause to be done, executed and delivered, all such further acts, things and instruments as may be reasonably requested or required more effectively to evidence and give effect to the transactions contemplated by this Agreement.

15.18 No Joint Venture. Nothing herein contained shall be construed as creating a partnership or joint venture by or between the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first written above.

TRITEL COMMUNICATIONS, INC.  
("Customer")

By:

  
Authorized Signature

W.S. Arnett  
Printed Name

President  
Title

BELLSOUTH TELECOMMUNICATIONS, INC.  
("BellSouth")

By:

  
Authorized Signature

SAM HASTINGS  
Printed Name

SALES VP  
Title

## APPENDIX I

### ANNUAL REVENUE COMMITMENT AND DISCOUNTS

<u>Contract Year</u>	<u>Annual Revenue Commitment</u>	<u>Discount</u>
August 1, 1999 – January 31, 2000	\$1,200,000.00	21%
Year 1	\$4,500,000.00	21%
Year 2	\$6,050,000.00	21%
Year 3	\$7,460,000.00	21%
Year 4	\$7,900,000.00	21%
Year 5	\$8,650,000.00	21%

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Bonus Discount pursuant to Section 6.2.2 – 21%

APPENDIX I-A

ANNUAL REVENUE COMMITMENT AND DISCOUNTS

<u>Contract Year</u>	<u>Annual Revenue Commitment</u>	<u>Discount</u>
Year 1	\$6,500,000.00	32%
Year 2	\$8,000,000.00	32%
Year 3	\$8,500,000.00	32%
Year 4	\$9,000,000.00	32%
Year 5	\$9,500,000.00	32%

---

V&T Discount pursuant to Section 6.12.6 – 32%

## APPENDIX II

### ELIGIBLE SERVICES

Services to be provided by BellSouth to Customer pursuant to this Agreement and Charges which contribute to the ARC are described in the Tariffs under the following designation:

1. - MegaLink (DS-1)
2. - LightGate (DS-3)
3. - SmartRing Services

#### **D. DESIGN SUPPORT SERVICES:**

1. BellSouth upon request, shall also provide Customer with Design Support Services for new Site provisioning or Installation of Services at a new Site at no additional charge to the Customer. Design Support Services consist of the following:

a. The Services of a dedicated system designer from the date of the execution of this Agreement to Customer's activation of CMRS service at each of its Sites in all of Customer's CMRS licensed areas (so-called MTA's or BTA's) that fall within the BellSouth service areas covered by this Agreement;

- b. Initial system design;
- c. Initial planning of new cell sites;
- d. Site visits for quotes of all special engineering and construction charges;
- e. Site construction meeting; and
- f. Final site inspection.

2. Any Design Support Services provided to Customer other than for new Site provisioning or Installation of Services at a new Site will be provided to Customer at a rate not to exceed One Hundred and Seventy Five Dollars (\$175) per hour.

3. BellSouth agrees to perform the annual network optimization at no charge to Customer. Any additional network optimization services requested by Customer will be provided to Customer at a rate not to exceed One Hundred and Seventy Five Dollars (\$175) per hour.



4. The charges for Design Support Services and network optimization services, if any, at Customer's option, may be deferred and allocated over the term of the Agreement at an annual interest rate of twelve percent (12%) per annum. In the event of Early Termination of this Agreement, any deferred charges will be due fifteen (15) days after the termination becomes effective.

5. Prior to commencement of any project for Customer for which BellSouth's Design Support Services will be provided, BellSouth will prepare and deliver to Customer a detailed written proposal setting forth the scope of Design Support Services to be provided and an estimated budget therefor. BellSouth will not commence such project or any Design Support Services thereon until Customer has authorized BellSouth to proceed.

### APPENDIX III

[RESERVED FOR FUTURE USE]

## APPENDIX IV

### PERFORMANCE SPECIFICATIONS

<u>TR# / ID*</u>	<u>Issue / Date</u>	<u>Technical Bell Core Reference Title</u>
TR-73501	July 8, 1999	LightGate® Service Interface and Performance Specifications
TR-73525	July 8, 1999	MegaLink® Service, BellSouth® MegaLink® Channel Service, & BellSouth® MegaLink® Plus Service Interface and Performance Specification
TR-73582	July 8, 1999	SMARTRing® Service OC-N & STS-1 Interface and Performance Specifications

\* TR #/ID refers to the publication number of the Bell Core technical reference.

**Schedule 1.52**

**RATES AND CHARGES**

**BellSouth Telecommunications, Inc. Private Line Services Tariff**

**Rates and Charges**

<b>State</b>	<b>MegaLink</b>	<b>LightGate</b>	<b>SmartRing</b>
Alabama	§B7.1.3	§B7.4.4	§B7.7.4
Florida	§B7.1.3	§B7.4.4	§B7.7.4
Georgia	§B7.1.3	§B7.4.4	§B7.7.4
Kentucky	§B7.1.3	§B7.4.4	§B7.7.4
Louisiana	§B7.1.3	§B7.4.4	§B7.7.4
Mississippi	§B7.1.3	§B7.4.4	§B7.7.4
North Carolina	§B7.1.3	N/A	§B7.7.4
South Carolina	§B7.1.3	N/A	§B7.7.4
Tennessee	§B7.1.3	§B7.4.4	§B7.7.4

### **Schedule 3.11**

#### **ACCEPTANCE TESTING**

BellSouth shall Install only those Services which have been tested in accordance with BellSouth's standard testing procedures and which operate in compliance with the Specifications set forth in Appendix IV. Upon completion of the Installation, BellSouth shall provide notice thereof to Customer.

Upon receipt of such notice, Customer, at its sole option and discretion, may conduct any reasonable tests it may elect to determine whether such Services conform to the Specifications.

Customer must reject or Accept such Services in writing within ten (10) Business Days from its receipt of BellSouth's notice of installation, which Acceptance shall be presumed unless the Services are rejected within said ten (10) day period. In any such notice of rejection, Customer must identify with specificity the Deficiencies or other reasons for rejection.

In the event Customer rejects such Installed Services by reason of any Deficiencies, as specified in Customer's notice of rejection, BellSouth shall immediately commence and diligently pursue best efforts to correct the Deficiencies. Upon completion of BellSouth's correction of Deficiencies, BellSouth shall provide notice to Customer that the affected Service is ready for Customer retesting in accordance with the aforementioned Acceptance procedure set forth at this Schedule 3.11.

BellSouth shall not commence billing for any Service until Customer's Acceptance of Service as provided herein.

Schedule 6.7

**INTERRUPTIONS AND INTERRUPTION CREDITS**

**BellSouth Telecommunications, Inc. Private Line Services Tariff  
Interruptions and Credit for Service Interruption**

<b>State</b>	<b>MegaLink</b>	<b>LightGate</b>	<b>SmartRing</b>
Alabama	§B2.4.8	§B2.4.8	§B2.4.8
Florida	§B2.4.8	§B2.4.8	§B2.4.8
Georgia	§B2.4.8	§B2.4.8	§B2.4.8
Kentucky	§B2.4.8	§B2.4.8	§B2.4.8
Louisiana	§B2.4.8	§B2.4.8	§B2.4.8
Mississippi	§B2.4.8	§B2.4.8	§B2.4.8
North Carolina	§B2.4.8	§B2.4.8	§B2.4.8
South Carolina	§B2.4.8	§B2.4.8	§B2.4.8
Tennessee	§B2.4.8	§B2.4.8	§B2.4.8

**Schedule 6.12**

**THE V&T NOTICE**

**NOTICE OF EXERCISE OF VOLUME & TERM OPTION**

[Date]

Mr. Eric Small  
President of Marketing-Interconnection Services  
BellSouth Telecommunications, Inc.  
34<sup>th</sup> Floor  
675 West Peachtree Street  
Atlanta, Georgia 30375

Re: Volume and Term Agreement (the "Agreement") dated as of August 1, 1999, by  
and between Tritel Communications, Inc. ("Tritel") and BellSouth  
Telecommunications, Inc. ("BellSouth")

Dear Madame or Sir:

Pursuant to Section 6.12.3 of the Agreement, Tritel hereby serves BellSouth with written  
notice of its exercise of the Volume and Term Option set forth in Section 6.12.1 of the  
Agreement.

Very truly yours,

Tritel Communications, Inc.

By: \_\_\_\_\_

**Schedule 12.4**

**TERMINATION LIABILITY CHARGES**

**BellSouth Telecommunications, Inc. Private Line Services Tariff**  
**Termination Liability Charges**

<b>State</b>	<b>MegaLink</b>	<b>LightGate</b>	<b>SmartRing</b>
Alabama	§B7.1.2.C.5	§B7.4.2.G	§B7.7.2.H.3
Florida	§B7.1.2.C.5	§B7.4.2.H	§B7.7.2.H.3
Georgia	§B7.1.2.C.5	§B7.4.2.G	§B7.7.2.H.3
Kentucky	§B7.1.2.C.5	§B7.4.2.G	§B7.7.2.H.3
Louisiana	§B7.1.2.C.5	§B7.4.2.G	§B7.7.2.H.3
Mississippi	§B7.1.2.C.5	§B7.4.2.G	§B7.7.2.H.3
North Carolina	§B7.1.2.C.5	N/A	§B7.7.2.H.3
South Carolina	§B7.1.2.C.5	N/A	§B7.7.2.H.3
Tennessee	§B7.1.2.C.5	§B7.4.2.G	§B7.7.2.H.3



## TENNESSEE ADDENDUM TO CSA No. TN00-2542-00

1. Customer and BellSouth acknowledge that various competitive alternatives are available to Customer in the State of Tennessee, including competitive alternatives to services provided herein, as evidenced by one or more of the following:
  - A. Customer has received offers for comparable services from one or more other service providers<sup>1</sup>;
  - B. Customer is purchasing or has purchased comparable services from one or more other service providers<sup>2</sup>;
  - C. Customer has been contacted by one or more other service providers of comparable services<sup>3</sup>; and
  - D. Customer is aware of one or more other service providers from whom it can currently obtain comparable services<sup>4</sup>.
2. Customer and BellSouth agree that Customer's early termination of the Agreement without cause will result in damages that are indeterminable or difficult to measure as of this date and will result in the charging of liquidated damages. Customer and BellSouth agree that with regard to services provided within the State of Tennessee, the amount of such liquidated damages shall equal the lesser of (A) the amount specified in the Agreement; (B) the sum of the repayment of discounts received during the previous 12 months of the service, the repayment of any waived or discounted non-recurring charges set forth in the Agreement, and the repayment of the pro-rated contract preparation charge set forth in the Agreement; or (C) six percent (6%) of the total Agreement amount. Notwithstanding any provisions in the Agreement to the contrary, Customer and BellSouth agree that with regard to services provided within the State of Tennessee, this Paragraph of this Addendum sets forth the total amounts of liquidated damages the Customer must pay upon early termination of the Agreement without cause. Customer and BellSouth agree that these amounts represent a reasonable estimate of the damages BellSouth would suffer as a result of such early termination and that these amounts do not constitute a penalty.
3. Customer and BellSouth acknowledge and confirm their understanding that:
  - (a) Customer's agreement to pay the difference between the actual billed revenue for its V&T Eligible Services and its contract revenue commitment, as set forth in Paragraph 6.11 of the Agreement, does not apply upon Customer's early termination of the Agreement; and
  - (b) Customer must therefore pay only the amount calculated in accordance with Paragraph 2 above upon early termination of the Agreement.

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4. Except in the case where the Subscriber assigns this Agreement to a certified reseller in accordance with Paragraph 12.1.2 of the Agreement, Subscriber may not assign its rights or obligations under this Agreement without the express written consent of the Company and only pursuant to the conditions contained in the appropriate tariff.
5. Customer and BellSouth agree that with regard to services provided within the State of Tennessee, the term of this Agreement is 36 months. Customer and BellSouth further agree that with regard to services provided within the State of Tennessee, Customer may renew the CSA for one additional terms of up to 36 months by providing BellSouth written notice of its intent to do so within 60 days of the expiration of the initial 36-month term. Customer and BellSouth understand and agree that any such renewal option exercised by the Customer is subject to approval by the Tennessee Regulatory Authority.

Tritel Communications, Inc.

BellSouth Telecommunications, Inc.

BY: ROLAND O PATTERSON  
Printed Name

BY: Elliot S Bryant  
Printed Name

BY: *Roland O Patterson*  
Authorized Signature

BY: *Elliot S Bryant*  
Authorized Signature

TITLE: VP - Network Systems

TITLE: \_\_\_\_\_

DATE: 1-5-01

DATE: \_\_\_\_\_

APPROVED AS TO  
LEGAL FORM  
*[Signature]* 1/5/01  
ATTORNEY FOR  
TRITEL COMMUNICATIONS, INC.

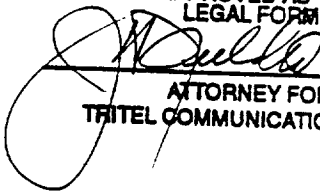
**Attachment to Addendum  
CSA No. TN00-2542-00**

1. Customer has received offers for comparable services from other service providers including Next Link.
2. Customer is currently not using comparable services provided by other service providers.
3. Customer has been contacted by other service providers including Next Link.
4. Customer is aware that comparable services are available from other service providers including Next Link and Time Warner.

Customer's Initials   *ROP*  

Date   1-5-07  

APPROVED AS TO  
LEGAL FORM

  
\_\_\_\_\_  
ATTORNEY FOR  
TRITEL COMMUNICATIONS, INC.

**FIRST AMENDMENT  
TO VOLUME AND TERM AGREEMENT**

THIS FIRST AMENDMENT is made and entered into as of the 9 day of March 2001 by and among BellSouth Telecommunications, Inc., a Georgia corporation ("BellSouth"), Tritel Communications, Inc., a Delaware corporation ("Tritel") and TeleCorp Communications, Inc., a Delaware corporation ("TeleCorp").

WHEREAS, BellSouth and Tritel have heretofore entered into that certain Volume and Term Agreement dated as of August 1, 1999 (the "Agreement"); and

WHEREAS, the Agreement contemplates that Affiliates (as defined in the Agreement) of Tritel that are "parties signatory" to the Agreement shall be considered Customers (as defined in the Agreement) under and may purchase services from BellSouth under the Agreement; and

WHEREAS, TeleCorp is an Affiliate of Tritel and desires to become a "party signatory" to the Agreement; and

WHEREAS, Tritel and BellSouth are willing to modify the Agreement to add TeleCorp as a "party signatory" to the Agreement; and

WHEREAS, Tritel and BellSouth desire to acknowledge and confirm Tritel's exercise of the V&T Option under the Agreement;

NOW, THEREFORE, in consideration of the mutual promises and benefits contained herein the parties do hereby agree as follows:

1. Capitalized terms used herein have the meanings set forth herein. Any capitalized terms used but not otherwise defined herein have the meanings set forth in the Agreement.

2. Tritel and BellSouth agree that from and after the date hereof, TeleCorp is hereby added to the Agreement as a "party signatory," and shall be entitled to all rights and benefits of a Customer as set forth in the Agreement.

3. By its execution hereof, TeleCorp does hereby specifically accept and agree to be bound by each and every term and provision of the Agreement.

4. BellSouth and Tritel hereby acknowledge and agree (i) that Tritel validly exercised the V&T Option under Section 6.12 of the Agreement and (ii) that pursuant to Section 6.12.4 of the Agreement (a) the Effective Date of the Agreement shall be November 1, 2000, (b) the Term of the Agreement shall be five (5) years commencing

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on November 1, 2000, (c) the Annual Revenue Commitments and Discounts under the Agreement shall be as set forth in Appendix I-A of the Agreement and (d) Tritel shall be entitled to the V&T Discounts as set forth in Section 6.12.6 of the Agreement.

5. Except as and only to the extent modified and amended herein, the Agreement and the parties respective rights, benefits, obligations, duties and liabilities thereunder, shall remain unchanged and in full force and effect.

**IN WITNESS WHEREOF**, Tritel, BellSouth and TeleCorp have caused this Amendment to be executed by its duly authorized officers as of the day and year first above written.

Tritel Communications, Inc.

By: [Signature]  
Printed Name

By: Thomas H. Sullivan  
Authorized Signature

Title: President

Date: 3/26/01

BellSouth Telecommunications, Inc.

By: J. K. BRINKLEY  
Printed Name

By: [Signature]  
Authorized Signature

Title: SR. DIRECTOR

Date: 3/9/01

TeleCorp Communications, Inc.

By: [Signature]  
Printed Name

By: Thomas H. Sullivan  
Authorized Signature

Title: President

Date: 3/26/01



## AGREEMENT

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and Tritel Communications, Inc., ("Carrier") a Delaware corporation and shall be deemed effective as of March 16, 2001, (the "Effective Date"). This agreement may refer to either BellSouth or Carrier or both as a "party" or "parties."

## WITNESSETH

WHEREAS, BellSouth is an incumbent local exchange carrier (ILEC) authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, Carrier is a Commercial Mobile Radio Service ("CMRS") provider licensed by the Federal Communications Commission ("FCC") to provide CMRS in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi and Tennessee; and

WHEREAS, the parties wish to interconnect their facilities and exchange traffic for the purposes of fulfilling their obligations pursuant to sections 251, 252 and 271 of the Telecommunications Act of 1996 and to replace any and all other prior agreements, both written and oral;

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, BellSouth and Carrier agree as follows:

I. **Definitions** For purposes of this Agreement, the following capitalized terms have the meanings set forth below unless the context requires otherwise. Terms that appear herein (whether or not capitalized) that are not defined herein have the meanings ascribed to them in the Act (defined hereto), or (if not defined therein) have the meanings customarily associated with them based on ordinary usage in the telecommunications industry as of the Effective Date.

A. **Commission** is defined as the appropriate regulatory agency in each of BellSouth's nine state region: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

B. **Effective Date** is defined in the first sentence of this Agreement.

**C. Intermediary function** is defined as the delivery, pursuant to this agreement or to Commission directive, of local or toll (using traditional landline definitions) telecommunications traffic to or from (i) a local exchange carrier (LEC) other than BellSouth; or (ii) an alternative (or competitive) local exchange carrier ("ALEC"); or (iii) another telecommunications carrier such as a CMRS provider other than Carrier through the network of BellSouth or Carrier from or to an end user of the other party.

**D. Local Traffic** is defined for purposes of reciprocal compensation under this Agreement as: (1) any telephone call that originates on the network of Carrier within a Major Trading Area ("MTA") and terminates on the network of BellSouth in the same MTA and within the Local Access and Transport Area ("LATA") in which the call is handed off from Carrier to BellSouth, and (2) any telephone call that originates on the network of BellSouth that is handed off directly to Carrier in the same LATA in which the call originates and terminates on the network of Carrier in the MTA in which the call is handed off from BellSouth to Carrier. For purposes of this Agreement, LATA shall have the same definition as that contained in the Telecommunications Act of 1996, and MTA shall have the same definition as that contained in the FCC's rules.

**E. Local Interconnection** is defined for purposes of this Agreement as (1) the connection of the parties' respective networks for the exchange and delivery of Local Traffic between the parties to be terminated on each party's network so that end users of either party have the ability to reach end users of the other party without the use of any access code or substantial delay in the processing of the call; and 2) a LEC's provision of unbundled network features, functions, and capabilities to Carrier.

**F. Percent of Interstate Usage (PIU)** is defined as a factor to be applied to that portion of Non-Local Traffic comprised of interstate interMTA minutes of use in order to designate those minutes that should be rated as interstate access services minutes of use. The numerator is all interstate interMTA minutes of use, less any interstate minutes of use for "Terminating Party Pays" services, such as 800 Services. The denominator is all interMTA minutes of use less all minutes attributable to "Terminating Party Pays" services.

**G. Percent Local Usage (PLU)** is defined as a factor to be applied to terminating minutes of use. The numerator is all "nonintermediary" Local minutes of use. The denominator is the total minutes of use including Local and Non-Local.

**H. Telecommunications Act of 1996 ("Act")** means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47, U.S.C. Section 1 et. seq.).



I. **Non-Local Traffic** is defined as all traffic that is neither Local Traffic nor access services (the latter described in Section V.F of this Agreement).

## II. **Purpose**

The parties desire to enter into this Agreement consistent with all applicable federal, state and local statutes, rules and regulations in effect as of the date of its execution including, without limitation, the Act at Sections 251, 252 and 271. The access and interconnection obligations contained herein enable Carrier to provide CMRS in those areas where it is authorized to provide such services within the nine state region of BellSouth.

The parties have entered into this Agreement to memorialize their agreement with respect to certain matters concerning Local Interconnection as a result of their negotiations pursuant to Sections 251 and 252 of the Act. With respect to any facility, feature, function, service, or other arrangement concerning Local Interconnection or any other matter subject to negotiation pursuant to Sections 251 and 252 of the Act between the parties that has not been agreed upon by the parties and memorialized herein, (a) the parties may conduct further negotiations pursuant to Sections 251 and 252 of the Act upon a written request therefor by Carrier, and (b) Carrier reserves any rights it might have under Section 332(c)(1)(B) of the Communications Act of 1934, 47 U.S.C. 332(c)(1)(B), as amended.

## III. **Term of the Agreement**

A. The term of this Agreement shall be two years, beginning on the Effective Date. If as of the expiration of this Agreement, a Subsequent Agreement (as defined in Section B below) has not been executed by the Parties, this Agreement shall continue on a month-to-month basis while a Subsequent Agreement is being negotiated. The Parties' rights and obligations with respect to this Agreement after expiration shall be as set forth in Section D below.

B. The Parties agree that by no later than one hundred and eighty (180) days prior to the expiration of this Agreement, they shall commence negotiations with regard to the terms, conditions and prices of local interconnection to be effective beginning on the expiration date of this Agreement ("Subsequent Agreement").

C. If, within one hundred and thirty-five (135) days of commencing the negotiation referred to in Section B above, the Parties are unable to satisfactorily negotiate new local interconnection terms, conditions and prices, either Party may petition the Commission to establish appropriate local interconnection arrangements pursuant to 47 U.S.C. 252. The Parties agree that, in such event, they shall encourage the Commission to issue its order regarding the appropriate

local interconnection arrangements no later than the expiration date of this Agreement. The Parties further agree that in the event the Commission does not issue its order prior to the expiration date of this Agreement, or if the Parties continue beyond the expiration date of this Agreement to negotiate the local interconnection arrangements without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the Parties, will be effective retroactive to the day following the expiration date of this Agreement.

**D.** Notwithstanding the foregoing, in the event that after the date of expiration of this Agreement and conversion of this Agreement to a month-to-month term, the Parties have not entered into a Subsequent Agreement, the one hundred sixty day (160) period for arbitration prescribed by 47 U.S.C. 252 (b)(1) has expired and either no arbitration proceeding has been filed in accordance with Section C above, or the Parties have not mutually agreed (where permissible) to extend the arbitration window for petitioning the applicable Commission(s) for resolution of those terms upon which the Parties have not agreed, then either Party may terminate this Agreement upon sixty (60) days notice to the other Party. In the event that BellSouth terminates this Agreement as provided above, BellSouth shall continue to offer services to Carrier pursuant to the terms, conditions and rates set forth in BellSouth's General Subscriber Services Tariff, Section A35, or, in the case of North Carolina, in the North Carolina Connection and Traffic Interchange Agreement effective June 30, 1994, as amended.

#### **IV. Local Interconnection and Compensation**

**A.** The delivery of Local Traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement. The parties agree that the exchange of traffic on BellSouth's interLATA EAS routes shall be considered as Local Traffic and compensation for the termination of such traffic shall be pursuant to the terms of this Section IV. EAS routes are those exchanges within an exchange's Basic Local Calling Area, as defined in Section A3 of BellSouth's General Subscriber Services Tariff.

**B.** Each party will pay the other for terminating its Local Traffic on the other's network the local interconnection rates as set forth in Attachment B-1. Charges for terminating traffic will be in accumulated conversation minutes, whole and partial, measured from receipt of answer supervision to receipt of disconnect supervision and rounded up to the next whole minute at the close of the billing period. The amount that each party shall pay to the other for the delivery of Local Traffic shall be calculated by multiplying the applicable rate in Attachment B-1 for each type of call by the total minutes of use each month for each such type of call. The minutes of use or portion thereof for each call, as the case may be, will be accumulated for the monthly billing period and the total of such minutes of use for the entire month rounded to the nearest minute. The usage

charges will be based on the rounded total monthly minutes. The charges for Local Interconnection shall be billed monthly and payable monthly. Late payment fees, not to exceed 1 1/2% per month (or a lower percent as specified by an appropriate state regulatory agency) after the due date may be assessed, if undisputed interconnection charges are not paid, within thirty (30) days after the due date of the monthly bill. All charges under this agreement shall be billed within one year from the time the charge was incurred, previously unbilled charges more than one year old shall not be billed by either party.

## **V. Methods of Interconnection**

A. 1. The parties agree that there are three appropriate methods of interconnecting facilities: (1) interconnection at any technically feasible point via purchase of facilities from either party (or from a third party) by the other party; (2) physical collocation; and (3) virtual collocation where physical collocation is not practical for technical reasons or because of space limitations. Type 1, Type 2A and Type 2B interconnection arrangements described in BellSouth's General Subscriber Services Tariff, Section A35, or, in the case of North Carolina, in the North Carolina Connection and Traffic Interchange Agreement effective June 30, 1994, as amended, may be purchased pursuant to this Agreement provided, however, that such interconnection arrangements shall be provided at the rates, terms and conditions set forth in this Agreement. Facilities for interconnection or for other BellSouth-supplied facilities, features, functions, or services may be purchased by Carrier (i) pursuant to a separate agreement between the parties, or (ii) pursuant to the rates, terms and conditions set forth in applicable tariffs, including without limitation BellSouth's intrastate Switched Access (Section E6) or Special Access (Section E7) services tariff.

2. Local Interconnection shall be provided at a level of quality at least equal to that which each party provides to itself, to any of its Affiliates, or, in the case of BellSouth-supplied interconnection, at least equal to that provided by BellSouth to any similarly-situated CMRS provider having interconnection arrangement(s) with BellSouth comparable to the interconnection arrangement(s) provided to Carrier under this Agreement; except that, upon request, a different level of quality may be provided to the extent technically feasible and subject to the negotiation of acceptable provisions and compensation arrangements. All interconnection facilities shall meet the applicable telecommunications industry standards of engineering, design, and operation, as the case may be, for LEC-CMRS interconnection in effect from time to time. Rates and charges for both virtual and physical collocation may be provided in a separate collocation agreement. Rates for virtual collocation will be based on BellSouth's Interstate Access Services Tariff, FCC #1, Section 20 and/or BellSouth's

Intrastate Access Services Tariff, Section E20. Rates for physical collocation will be negotiated on an individual case basis.

B. The parties will accept and provide any of the preceding methods of interconnection. Reciprocal connectivity shall be established to at least one BellSouth access tandem within every LATA Carrier desires to serve, or Carrier may elect to interconnect directly at an end office for delivery of traffic to end users served by that end office. Such interconnecting facilities shall conform, at a minimum, to the telecommunications industry standard of DS-1 pursuant to Bellcore Standard No. TR-NWT-00499. Signal transfer point, Signaling System 7 ("SS7") connectivity is required at each interconnection point after Carrier implements SS7 capability within its own network. BellSouth will provide out-of-band signaling using Common Channel Signaling Access Capability where technically and economically feasible, in accordance with the technical specifications set forth in the BellSouth Guidelines to Technical Publication, TR-TSV-000905. The parties agree to engineer their respective facilities' (i) to provide the necessary on-hook, off-hook answer and disconnect supervision, (ii) hand off calling party number ID when technically feasible, and (iii) to honor privacy codes and line blocking requests.

C. Nothing herein shall prevent Carrier from utilizing existing collocation facilities, purchased from the appropriate tariffs, for local interconnection; provided, however, that, unless otherwise agreed to by the parties, if Carrier orders new facilities for interconnection or rearranges any of its existing facilities in order to use such facilities for local interconnection hereunder and a BellSouth charge is applicable thereto, BellSouth shall only charge Carrier the lower of the interstate or intrastate tariffed rate or promotional rate.

D. The parties agree to establish trunk groups from the interconnecting facilities of subsection (A) of this Section such that each party provides a reciprocal of each trunk group established by the other party. Notwithstanding the foregoing, each party may construct its network, including the interconnecting facilities, to achieve optimum cost effectiveness and network efficiency. The parties agree to provide at least a P.01 level of service and to work cooperatively in the placement and/or removal of interconnection facilities. Unless otherwise agreed:

(i) BellSouth will provide or bear the cost of all trunk groups for the delivery of Local Traffic from BellSouth's network to Carrier's Mobile Telephone Switching offices within BellSouth's service territory; and

(ii) Carrier will provide or bear the cost of all trunk groups for the delivery of Local Traffic from Carrier to each BellSouth access tandem and end office at which the parties' networks are interconnected, and, Carrier will provide or bear the cost of all trunk groups for delivery and receipt of

Intermediary traffic; Carrier may supply its own interconnection facilities or may purchase such facilities (a) from BellSouth pursuant to a separate agreement or tariff for this purpose, or (b) from any other third-party supplier; and

(iii) in the event the parties agree to use two-way interconnection facilities in lieu of separate one-way facilities, the appropriate charges for such facilities shall be divided on a pro rata basis reflecting the estimated or actual percentage of traffic that terminates on the network of each party; provided however that, in such circumstance, BellSouth's treatment of Carrier as to said charges shall be consistent with BellSouth treatment of other local exchange carriers for the same charges.

E. The parties will use an auditable PLU factor as a method for determining the amount of traffic exchanged by the parties that is Local Traffic and the amount of traffic that is Non-Local Traffic. The PLU factor will be used for traffic delivered by either party for termination on the other party's network.

F. When the parties provide an access service connection between an interexchange carrier ("IXC") and each other, each party will provide its own access services to the IXC. If access charges are billed, each party will bill its own access service rates to the IXC.

G. The ordering and provision of all services purchased from BellSouth by Carrier shall be as set forth in the BellSouth Telecommunications Wireless Customer Guide as amended from time to time. The ordering and provisioning of facilities or services by a party, including, but limited to, installation, testing, maintenance, repair, and disaster recovery, shall be provided at a level of quality and care at least equal to that which it provides to itself, an affiliate, or, in the case of BellSouth supplied interconnection, at least equal to that provided by BellSouth to any other similarly situated CMRS provider having interconnection arrangement(s) with BellSouth comparable to the interconnection arrangement(s) provided to Carrier under this Agreement, unless Carrier and BellSouth specifically negotiate a different level of quality or care.

H. BellSouth will make available to Carrier an electronic mail capability, via the Internet, through which Carrier may deliver ordering information to BellSouth and through which Carrier may receive confirmation of such ordering information.

## **VI. Non-Local Traffic Interconnection**

A. The delivery of Non-Local Traffic by a party to the other party shall be reciprocal and compensation will be mutual. For terminating its Non-Local Traffic on the other party's network, each party will pay either the access charges

described in paragraph (B) hereunder or the Non-Local Intermediary Charges described in paragraph (D) hereunder, as appropriate.

**B.** For originating and terminating intrastate or interstate interMTA Non-Local Traffic, each party shall pay the other BellSouth's intrastate or interstate, as appropriate, switched network access service rate elements on a per minute of use basis. Said rate elements shall be as set out in BellSouth's Intrastate Access Services Tariff or BellSouth's Interstate Access Services Tariff as those tariffs may be amended from time to time during the term of this Agreement. The appropriate charges will be determined by the routing of the call.

**C.** The parties agree that actual traffic measurements in each of the appropriate categories is the preferred method of classifying and billing traffic. If, however, either party cannot measure traffic in each category, then the parties shall agree on a surrogate method of classifying and billing traffic, taking into consideration territory served (e.g. MTA boundaries, LATA boundaries and state boundaries) and traffic routing of the parties.

**D.** If Non-Local Traffic originated by a party to this Agreement is delivered by the other party for termination to the network of a nonparty telecommunications carrier ("Nonparty Carrier"), then the party performing the intermediary function will bill the other party and the other party shall pay a \$.002 per minute intermediary charge in addition to any charges that the party performing the intermediary function may be obligated to pay to the Nonparty Carrier (collectively called "Non-Local Intermediary Charges"). The charges that BST may be obligated to pay to the Nonparty Carrier may change during the term of this Agreement and that the appropriate rate shall be the rate in effect when the traffic is terminated. The parties shall agree for purposes of this Section, and subject to verification by audit what percentage of the Non-Local Traffic delivered to BellSouth by Carrier shall be subject to Non-Local Intermediary Charges. The parties agree that none of the Non-Local Traffic delivered to Carrier by BellSouth shall be subject to the Non-Local Intermediary Charges, and thus none of the Non-Local Traffic delivered to Carrier by BellSouth shall be subject to the Non-Local Intermediary Charges. Also, Intermediary traffic transiting BellSouth's network to Carrier is not Local Traffic and Carrier shall not bill BellSouth for such traffic as BellSouth is not obligated to pay Carrier for such traffic.

## **VII. Provision of Network Elements**

**A.** BellSouth shall, upon request of Carrier, and to the extent technically feasible, provide to Carrier access to its Network Elements for the provision of a Carrier telecommunications service. Any request by Carrier for access to a BellSouth Network Element that is not already available shall be treated as a Network Element bona fide request. Carrier will pay BellSouth the cost associated with the bona fide request if Carrier cancels the request or fails to

purchase the service once completed. Carrier shall provide BellSouth access to its Network Elements as mutually agreed by the parties or as required by the Commission or the FCC.

B. A Network Element obtained by one party from the other party under this section may be used in combination with the facilities of the requesting party only to provide a telecommunications service, including obtaining billing and collection, transmission, and routing of the telecommunications service.

C. A separate agreement or an amendment to this Agreement may be required for utilization of the above referenced Network Elements.

#### **VIII. Access To Poles, Ducts, Conduits, and Rights of Way**

BellSouth will provide to Carrier, pursuant to 47 U.S.C. § 224, as amended by the Act, nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by BellSouth.

#### **IX. Access to 911/E911 Emergency Network**

A. BellSouth and Carrier recognize that 911 and E911 services were designed and implemented primarily as methods of providing emergency services to fixed location subscribers. While BellSouth and Carrier recognize the need to provide "911-like" service to mobile subscribers, both parties recognize that current technological restrictions prevent an exact duplication of the services provided to fixed location customers. BellSouth will route "911-like" calls received from Carrier to the emergency agency designated by Carrier for such calls. Carrier will provide the information necessary to BellSouth so that each call may be properly routed and contain as much pertinent information as is technically feasible.

B. BellSouth and Carrier recognize that the technology and regulatory requirements for the provision of "911-like" service by CMRS carriers are evolving and agree to modify or supplement the foregoing in order to incorporate industry accepted technical improvements that Carrier desires to implement and to permit Carrier to comply with applicable regulatory requirements.

#### **X. Access to Telephone Numbers**

Carrier is responsible for interfacing with the North American Numbering Plan administrator for all matters dealing with dedicated NXXs. BellSouth will cooperate with Carrier in the provision of shared NXXs where BellSouth is the service provider.

## **XI. Local Number Portability**

The Permanent Number Portability (PNP) database supplies routing numbers for calls involving numbers that have been ported from one local service provider to another. PNP is currently being worked in industry forums. The results of these forums will dictate the industry direction of PNP. BellSouth will provide access to the PNP database at rates, terms and conditions as set forth by BellSouth and in accordance with an effective FCC or Commission directive.

## **XII. Access to Signaling and Signaling Databases**

**A.** BellSouth will offer to Carrier use of BellSouth's signaling network and signaling databases on an unbundled basis at BellSouth's published tariffed rates set forth in Section XIII B below or at unbundled rates that may be available through non-tariffed arrangements. Signaling functionality will be available with both A-link and B-link connectivity.

**B.** Where interconnection is via B-link connections, charges for the SS7 interconnection elements are as follows: 1) Port Charge - BellSouth shall not bill an STP port charge nor shall BellSouth pay a port charge; 2) SS7 Network Usage - BellSouth shall bill its tariffed usage charge and shall pay usage billed by the Carrier at rates not to exceed those charged by BellSouth; 3) SS7 Link - BellSouth will bill its tariffed charges for only two links of each quad ordered. Application of these charges in this manner is designed to reflect the reciprocal use of the parties' signaling networks. Where interconnection is via A-link connections, charges for the SS7 interconnection elements are as follows: 1) Port Charge - BellSouth shall bill its tariffed STP port charge but shall not pay a termination charge at the Carrier's end office; 2) SS7 Network Usage - BellSouth shall bill its tariffed usage charge but shall not pay for any usage; 3) SS7 Link - BellSouth shall bill its tariffed charges for each link in the A-link pair but shall not pay the Carrier for any portion of those links.

## **XIII. Network Design and Management**

**A.** The parties will work cooperatively to install and maintain reliable interconnected telecommunications networks, including but not limited to, maintenance contact numbers and escalation procedures. BellSouth will provide public notice of changes in the information necessary for the transmission and routing of Carrier's services using its local exchange facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.



- B.** The interconnection of all networks will be based upon accepted industry/national guidelines for transmission standards and traffic blocking criteria.
- C.** The parties will work cooperatively to apply sound network management principles by invoking appropriate network management controls, e.g. call gapping, to alleviate or prevent network congestion.
- E.** The parties will provide Common Channel Signaling (CCS) information to one another, where available and technically feasible, in conjunction with all traffic in order to enable full interoperability of CLASS features and functions except for features or functions that have not been deployed in the parties' respective networks. All CCS signaling parameters will be provided, including automatic number identification (ANI), originating line information (OLI) calling party category, charge number, etc. All privacy indicators will be honored, and the parties agree to cooperate on the exchange of Transactional Capabilities Application Part (TCAP) messages to facilitate full interoperability of CCS-based features between the respective networks.
- F.** For network expansion, the parties will review engineering requirements on a quarterly basis and establish forecasts for trunk utilization as required by Section V of this Agreement. New trunk groups will be implemented as stated by engineering requirements for both parties.
- G.** The parties will provide each other with the proper call information, including all proper translations for routing between networks and any information necessary for billing where BellSouth provides recording capabilities. This exchange of information is required to enable each party to bill properly.

#### **XIV. Auditing Procedures**

- A.** Upon thirty (30) days written notice, each party must provide the other the ability and opportunity to conduct an annual audit to ensure the proper billing of traffic between the parties. The parties will retain records of call detail for a minimum of nine months from which the PLU, the percent intermediary traffic, the percent interMTA traffic, and the PIU can be ascertained. The audit shall be accomplished during normal business hours at an office designated by the party being audited. Audit request shall not be submitted more frequently than one (1) time per calendar year. Audits shall be performed by a mutually acceptable independent auditor paid for by the party requesting the audit. The PLU shall be adjusted based upon the audit results and shall apply to the usage for the quarter the audit was completed, the usage for the quarter prior to the completion of the audit, and to the usage for the two quarters following the completion of the audit.

B. Should Carrier in the future provide toll services through the use of network switched access services, then all jurisdictional report requirements, rules and regulations specified in E2.3.14 of BellSouth's Intrastate Access Services Tariff will apply to Carrier. After the Local Traffic percentage has been determined by use of the PLU factor for application and billing of Local Interconnection, the PIU factor will be used for application and billing of interstate and intrastate access charges, as appropriate.

## **XV. Liability and Indemnification**

A. **Tritel Liability.** In the event that Tritel consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, all such entities shall be jointly and severally liable for the obligations of Tritel under this Agreement.

B. **Liability for Acts or Omissions of Third Parties.** Neither Party shall be liable to the other Party for any act or omission of another telecommunications company providing services to said other Party.

C. **Limitation of Liability.** Except for any indemnification obligations of the Parties hereunder, each Party's liability to the other for any action, loss, cost, claim, judgement, damages, injury or liability or expense, including without limitation reasonable attorney's fees, (collectively, "Loss") relating to or arising out of any negligent act or omission in its performance of this Agreement whether in contract or in tort, shall be limited to a credit for the actual cost of the services or functions not performed or improperly performed. Notwithstanding the foregoing, this limitation of liability shall not apply in the event of either Party's (1) gross negligence, (2) willful misconduct, or (3) material breach of any material term of this Agreement which has not been cured pursuant to the following terms. If either Party believes the other Party has materially breached this Agreement, the aggrieved party must notify the breaching Party and the breaching Party shall have sixty (60) days to cure such breach. Willful misconduct as used in this Section shall not include actions in reliance upon either Party's reasonable interpretation of this Agreement even if such term is ultimately found to be erroneous by the Commission, FCC, or court of competent jurisdiction. Further, failure to pay any undisputed sums due under this Agreement shall not be subject to the notice and cure provisions of this Section.

D. **Limitations in Tariffs.** A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to the End User or third Party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount

such Party would have charged that applicable person for the service, product or function that gave rise to such loss or (ii) for Consequential Damages (defined hereunder). To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a Loss as a result thereof, such Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such loss.

E. Neither BellSouth nor Tritel shall be liable for damages to the other Party's terminal location, equipment or End User premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a Party's negligence or willful misconduct or by a Party's failure to ground properly a local loop after disconnection.

F. Under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data (collectively, "Consequential Damages"). In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the Services, or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

G. To the extent any specific provision of this Agreement purports to impose liability, or limitation of liability, on either Party different from or in conflict with the liability or limitation of liability set forth in this Section, then with respect to any facts or circumstances covered by such specific provisions, the liability or limitation of liability contained in such specific provision shall apply.

H. **Indemnification for Certain Claims.** The Party providing services hereunder, its affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder from and against any Loss arising from the receiving Party's use of the services provided under this Agreement to the extent such Loss pertains to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications, or (2) any Loss claimed by the End User of the Party receiving services arising from such receiving Party's use or reliance on the providing Party's services, actions, duties, or obligations arising out of this Agreement.

I. **Disclaimer.** EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

## **XVI. Modification of Agreement**

A. BellSouth shall make available, pursuant to 47 USC § 252(i) and the FCC rules and regulations regarding such availability, to Carrier any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC § 252. The Parties shall adopt all rates, terms and conditions concerning such other interconnection, service, or network element and any other rates, terms and conditions that are interrelated or were negotiated in exchange for or in conjunction with the interconnection, service or network element being adopted. The adopted interconnection, service, or network element and agreement shall apply to the same states as such other agreement and for the identical term of such other agreement.

B. If Tritel changes its name or otherwise makes changes to its public identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of Tritel to notify BellSouth of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.

C. No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

D. Execution of this Agreement by either Party does not confirm or imply that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 or with the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

E. In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of Carrier or BellSouth to perform any material terms of this Agreement, Tritel or BellSouth may, on thirty (30) days' written notice require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually

acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in Section XIX.

F. If any provision of this Agreement, or the application of such provision to either Party or circumstance, shall be held invalid, the remainder of the Agreement, or the application of any such provision to the Parties or circumstances other than those to which it is held invalid, shall not be effective thereby, provided that the Parties shall attempt to reformulate such invalid provision to give effect to such portions thereof as may be valid without defeating the intent of such provision.

## **XVII. Taxes and Fees**

A. **Definition.** For purposes of this section, the terms "taxes" and "fees" shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) which are imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments therefor.

B. Taxes And Fees Imposed Directly On Either Providing Party Or Purchasing Party.

1. Taxes and fees imposed on the providing party, which are neither permitted nor required to be passed on by the providing party to its customer, shall be borne and paid by the providing party.

2. Taxes and fees imposed on the purchasing party, which are not required to be collected and/or remitted by the providing party, shall be borne and paid by the purchasing party.

C. Taxes And Fees Imposed On Purchasing Party But Collected And Remitted By Providing Party.

1. Taxes and fees imposed on the purchasing party shall be borne by the purchasing party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing party.

2. To the extent permitted by applicable law, any such taxes and fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing party shall remain liable for any such taxes and fees regardless of whether they

are actually billed by the providing party at the time that the respective service is billed.

3. If the purchasing party determines that in its opinion any such taxes or fees are not payable, the providing party shall not bill such taxes or fees to the purchasing party if the purchasing party provides written certification, reasonably satisfactory to the providing party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing party, the purchasing party shall have the right, at its own expense, to contest the same in good faith, in its own name or on the providing party's behalf. In any such contest, the purchasing party shall promptly furnish the providing party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing party and the governmental authority.

4. In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing party during the pendency of such contest, the purchasing party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

5. If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing party shall pay such additional amount, including any interest and penalties thereon.

6. Notwithstanding any provision to the contrary, the purchasing party shall protect, indemnify and hold harmless (and defend at the purchasing party's expense) the providing party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing party in connection with any claim for or contest of any such tax or fee.

7. Each party shall notify the other party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a governmental authority; such notice to be provided at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

8. The Purchasing Party shall have the right, at its own expense, to claim a refund or credit, in its own name or on the Providing Party's behalf, of any such tax or fee that it determines to have paid in error, and the Purchasing Party shall be entitled to any recovery thereof.

**D. Taxes And Fees Imposed On Providing Party But Passed On To Purchasing Party.**

1. Taxes and fees imposed on the providing party, which are permitted or required to be passed on by the providing party to its customer, shall be borne by the purchasing party.

2. To the extent permitted by applicable law, any such taxes and fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing party at the time that the respective service is billed.

3. If the purchasing party disagrees with the providing party's determination as to the application or basis of any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee and with respect to whether to contest the imposition of such tax or fee. Notwithstanding the foregoing, the providing party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing party shall abide by such determination and pay such taxes or fees to the providing party. The providing party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes or fees; provided, however, that any such contest undertaken at the request of the purchasing party shall be at the purchasing party's expense.

4. In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing party during the pendency of such contest, the purchasing party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

5. If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing party shall pay such additional amount, including any interest and penalties thereon.

6. Notwithstanding any provision to the contrary, the purchasing party shall protect, indemnify and hold harmless (and defend at the purchasing

party's expense) the providing party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing party in connection with any claim for or contest of any such tax or fee.

7. Each party shall notify the other party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a governmental authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

E. Mutual Cooperation. In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

#### **XVIII. Treatment of Proprietary and Confidential Information**

A. The parties agree that it may be necessary to provide each other with certain confidential information, including trade secret information, including but not limited to, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data, call detail records and like information (hereinafter collectively referred to as "Information"). The parties agree that if Information is provided in written, graphic or other usable form and clearly marked with a confidential, private or proprietary legend, then that Information will be returned to the owner within a reasonable time. Both parties agree that such marked Information shall not be copied or reproduced in any form except to the extent required to perform this Agreement. The parties shall protect any Information received from distribution, disclosure or dissemination to anyone except (i) employees of the parties with an identifiable need to know such Information who agree in writing to be bound by the terms of this Section, and (ii) the parties' respective attorneys and other professional advisors having a duty to protect clients' confidential information; however, in no event shall any of Carrier's Information be disclosed to any person employed by an Affiliate of BellSouth engaged in the provision of CMRS. In the event any person having had access to Carrier's Information is subsequently employed by an Affiliate of BellSouth engaged in the provision of CMRS, such person shall be required to agree in writing not to reveal or use such Information. The parties will use the same standard of care to protect Information received, as they would use to protect their own confidential and proprietary Information.



B. Notwithstanding the foregoing, all Information in any party's possession that would constitute Customer Proprietary Network Information of the party or the parties' customers pursuant to any federal or state law or the rules and regulations of the FCC or any state commission, and any Information developed or received by a party regarding the other party's facilities, services, volumes, or usage shall automatically be deemed confidential Information for all purposes, even if not marked as such, and shall be held confidential as is required for Information.

C. Notwithstanding the foregoing, there will be no obligation to protect any portion of any Information that is either: 1) made publicly available by the owner of the Information or lawfully disclosed by a nonparty to this Agreement; 2) lawfully obtained from any source other than the owner of the Information; 3) independently developed by personnel of the receiving party to whom Information had not been previously disclosed and not based on or derived from such Information; or 4) previously known to the receiving party without an obligation to keep it confidential. A party may also disclose all Information it is required or ordered to disclose by law, a court, or governmental agency, as long as the party that owns such Information has been notified of the required disclosure promptly after the disclosing party becomes aware of its requirement to disclose. The party required to disclose the Information shall take all lawful measures to avoid disclosing the Information called for until the party that owns the Information has had a reasonable time to seek and comply with a protective order issued by a court or governmental agency of competent jurisdiction that with respect to the Information otherwise required to be disclosed.

D. The party's obligations to safeguard information shall survive for one (1) year after the expiration or termination of this Agreement for any reason whatsoever.

## **XIX. Resolution of Disputes**

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will initially refer the disputed issue to the individuals designated by the parties. If the issue is not resolved within 30 days, either party may petition the Commission for a resolution of the dispute. However, each Party reserves the right to seek judicial review of any ruling made by the Commission concerning this Agreement.

## **XX. Limitation of Use**

The parties agree that this Agreement shall not be proffered by either party in another jurisdiction as evidence of any concession or as a waiver of any position taken by the other party in that jurisdiction or for any other purpose.

## **XXI. Waivers**

Any failure by either party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and each party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

## **XXII. Assignment**

No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other party, which will not be unreasonably withheld; provided, that (i) the parties will permit the addition of Affiliates as parties hereto, and (ii) a party may assign its rights or delegate its obligations hereunder without the consent of the other party to an Affiliate if such Affiliate is, in the case of BellSouth, an authorized local exchange telephone carrier, or in the case of Carrier, a licensed provider of commercial mobile radio telecommunications services.

## **XXIII. Amendment**

This Agreement may not be amended in any way except upon written consent of the parties.

## **XXIV. Severability**

In the event that any provision of this Agreement shall be held invalid, illegal, or unenforceable, it shall be severed from the Agreement and the remainder of this Agreement shall remain valid and enforceable and shall continue in full force and effect; provided however, that if any severed provisions of this Agreement are essential to any party's ability to continue to perform its material obligations hereunder, the parties shall immediately begin negotiations of new provisions to replace the severed provisions.

## **XXV. Survival**

Any liabilities or obligations of a party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a party under the provisions regarding indemnification, confidential information, limitations of liability and any other provisions of this Agreement which, by their terms, are contemplated to survive (or be performed after) termination of this Agreement, shall survive cancellation or termination thereof for a period of two (2) years.

## **XXVI. Governing Law**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to Georgia's conflict of laws principles, and, where applicable, federal law, including the Communications Act of 1934, as amended by the Act.

## **XXVII. Arm's Length Negotiations**

The drafting of this Agreement was a collaborative effort between the parties. Accordingly, in connection with the interpretation for any reason of any provision of this Agreement, there shall be no inference drawn against the party that drafted such provision.

## **XXVIII. No Joint Venture**

The parties are independent contractors and nothing herein shall be construed to imply that they are partners, joint venturers or agents of one another.

## **XXIX. Remedies Cumulative**

Except as otherwise expressly provided in this Agreement, each of the remedies provided under this Agreement is cumulative and is in addition to any remedies that may be available at law or in equity.

## **XXX. No Third Party Beneficiaries**

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide any person not a party or proper assignee or successor hereunder with any beneficial interest, remedy, claim, liability, reimbursement, cause of action, or other privilege arising under or relating to this Agreement.

## **XXXI. Publicity**

Neither party shall publish or use any advertising, sales promotions or other publicity materials that use the other party's logo, trademarks or service marks.

## **XXXII. References to Other Documents**

Whenever any provision of this Agreement refers to a technical reference, technical publication, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition

(including any amendments, supplements, addenda, or successors) or such documents that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) or each document incorporated by reference in such a technical reference, technical publication, or publication of industry standards. Should there be an inconsistency between or among publications or standards, the parties shall mutually agree upon which requirement shall apply.

### **XXXIII. Execution**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and which together shall constitute a single agreement. A facsimile copy of a party's execution of this Agreement shall be valid and binding upon the party and must be followed as soon as practicable thereafter by the original version of such execution.

### **XXXIV. Filing of Agreement**

Upon execution of this Agreement it shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act. If the regulatory agency imposes any filing or public interest notice fees regarding the filing or approval of the Agreement, Carrier shall be responsible for publishing the required notice and the publication and/or notice costs shall be borne by Carrier.

### **XXXV. Notices**

A. Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person, via overnight mail, or given by postage prepaid mail, address to:

**BellSouth Telecommunications, Inc.**  
675 W. Peachtree St. N.E.  
Suite 4300  
Atlanta, Georgia 30375  
Attn: Legal Dept. "Wireless" Attorney

**Tritel Communications, Inc.**  
111 E. Capital Street  
Suite 500  
Jackson, MS 39201  
Attn: Mr. Joseph Pardue  
Director of Carrier Relations

Copy to:

Chip Gerry  
Gerry, Friend & Sapronov, LLP  
Three Ravinia Drive, Suite 1450  
Atlanta, Georgia 30346-2131

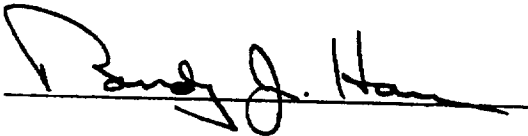
or at such other address as the intended recipient previously shall have designated by written notice to the other party.

B. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails; and by overnight mail, the day after being sent.

#### XXXVI. Entire Agreement

This Agreement, together with its preamble, recitals and all Attachments hereto, incorporated herein by this reference, sets forth the entire understanding and supersedes prior agreements between the parties relating to the subject matter contained herein and merges all prior discussions between them, and neither party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the party to be bound thereby. In the event of any conflict between the term(s) of this Agreement and those of an applicable tariff, the terms of this Agreement shall control.

**BellSouth Telecommunications, Inc.**

By: 

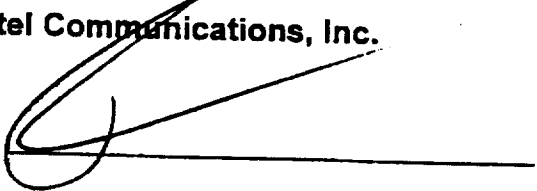
Randy J. Ham

Managing Director –  
Wireless interconnection

Title

June 25, 2001  
Date

**Tritel Communications, Inc.**

By: 

Thomas H. Sullivan  
President

Title

JUN 06 2001  
Date

## Attachment B-1

### CMRS Local Interconnection Rates

(All rates are Per Minute of Use)

#### Alabama

Type 1 (End Office Switched):	\$ .004709
Type 2A (Tandem Switched):	\$ .004709
Type 2B (Dedicated End Office):	\$ .0017

#### Florida

Type 1 (End Office Switched):	\$ .003776
Type 2A (Tandem Switched):	\$ .003776
Type 2B (Dedicated End Office):	\$ .002

#### Georgia

Type 1 (End Office Switched):	\$ .004513
Type 2A (Tandem Switched):	\$ .004513
Type 2B (Dedicated End Office):	\$ .00160

#### Kentucky

Type 1 (End Office Switched):	\$ .005273
Type 2A (Tandem Switched):	\$ .005273
Type 2B (Dedicated End Office):	\$ .002562

#### Louisiana

Type 1 (End Office Switched):	\$ .003730
Type 2A (Tandem Switched):	\$ .003730
Type 2B (Dedicated End Office):	\$ .001599

#### Mississippi

Type 1 (End Office Switched):	\$ .009104
Type 2A (Tandem Switched):	\$ .009104
Type 2B (Dedicated End Office):	\$ .0026

#### Tennessee

Type 1 (End Office Switched):	\$ .003767
Type 2A (Tandem Switched):	\$ .003767
Type 2B (Dedicated End Office):	\$ .0019